

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

18-CR-204 (NGG)

United States Courthouse
Brooklyn, New York

5 -against-

June 18, 2019
9:00 a.m.

6 KEITH RANIERE,

7 Defendant.

8 -----x

9 TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
10 BEFORE THE HONORABLE NICHOLAS G. GARAUFIS
UNITED STATES SENIOR DISTRICT JUDGE
BEFORE A JURY

11 APPEARANCES

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SUMMATIONS - MR. AGNIFILO

1 (In open court.)

2 THE COURTROOM DEPUTY: All Rise.

3 THE COURT: Appearances.

4 MS. PENZA: Moira Penza, Tanya Hajjar and Mark Lesko
5 for the United States. Also at counsel table are Special
6 Agents Michael Lever and Michael Wenniger and Randall Harvey.

7 MR. AGNIFILO: Mark Agnifilo, Temy Geragos, Paul
8 DerOhannesian, Danielle Smith for Keith Raniere, who is here
9 with us this morning.

10 THE COURT: Very well, good morning. And are you
11 ready --

12 MR. AGNIFILO: I am.

13 THE COURT: -- to complete your closing?

14 MR. AGNIFILO: I am.

15 MR. LESKO: One request, I'm expecting Mr. Agnifilio
16 to end with his best stuff, could we have five minutes after
17 Mr. Agnifilio ends to set up and get organized?

18 THE COURT: I'll send the jury out for five minutes
19 and then you can organize, and then we'll proceed with the
20 rebuttal.

21 MR. LESKO: Thank you.

22 THE COURT: That's fine.

23 Same rules apply as yesterday for the gallery.

24 (Jury enters the courtroom.)

25 THE COURT: Please be seated.

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1 Good morning members of the jury.

2 THE JURY: (Collectively) Good morning.

3 THE COURT: At this time we'll continue with the
4 defense closing argument. Mr. Agnifilio, please.

5 MR. AGNIFILO: Thank you, your Honor.

6 Good morning everybody.

7 THE JURY: (Collectively) Good morning.

8 MR. AGNIFILO: I have 30 or 35 minutes for you, then
9 I'm going to sit down. I think Mr. Lesko is going to talk to
10 you for a while. Then the parties will be done. Then later
11 this morning his Honor is going to charge you on the law, then
12 you'll start deliberations.

13 A couple of things. I think yesterday I said that
14 Nicole was in Delegates, I think it was Jay. You can remember
15 the testimony as well. But I think Jay said she was in
16 Delegates.

17 Here is the point, how can it be forced labor if
18 she's if she's getting paid, in this case from the person who
19 actually brought her into DOS. India was in charge of
20 Delegates, she's actually paying Jay for work.

21 One of the things that the Government mentioned in
22 their summation, that came out in the evidence, is that people
23 worked on Pam's memorial for free and they were not paid. The
24 Government is going trying to say that is forced labor. Think
25 about it. What we know from the testimony, I think, is that

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1 Pam is somebody everybody talked about, they seemed to love
2 her, admire her, respect her. She dies tragically of cancer.
3 This is not the kind of thing you expect to be paid for. This
4 is what people in a community do to each other, for each
5 other.

6 This is really what this was. Whatever other things
7 you might conclude about what NXIVM was and what DOS was, it
8 was people who lived together in a community. And everybody
9 was very clear, even the Government witnesses who certainly
10 weren't here to always say nice things about Keith Raniere or
11 DOS or NXIVM, they all said we were a community, it was nice,
12 I had friends, I cared for people. It seemed to be a nice
13 thing.

14 Part of what I saying yesterday, one of the hardest
15 things to do in this case is to imagine what life was like
16 back in the day. But you know, because certain people told
17 you about it.

18 Your job really is when you go in the back is to get
19 down to certain essential truths. You're going to go back
20 there and ask questions. What was DOS? What was it? What
21 was it meant to be? What was it once it started? Was it sex
22 trafficking, really? Was it sex trafficking, or was it
23 something else? Was it forced, fraud or coercion being used
24 to cause commercial sex, which is what part of the definition
25 of what sex trafficking is. Was that what it was or was it

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1 something else? Was it about commercial sex? Was that
2 anyone's idea?

3 When you listen to Keith talk in the tapes about the
4 creation of DOS, is there any suggestion, inkling, hey, this
5 is a way to make money. That is not what the evidence has
6 been. That is not what the witness's have said, certainly
7 that's not what the witnesses have said.

8 The only person I think who testified at the trial,
9 who I didn't talk about yesterday and I'm going to talk about
10 very briefly now, is Sylvie. There is a point I'm going to
11 make with Sylvie's testimony. Sylvie testified, I think the
12 first witness in the case, so going back now six weeks, I'm
13 sure you remember what she said.

14 Basically she said that she was very close with
15 Clare. Clare kind of brought her over. You can conclude
16 Clare took very good care for her. Clare paid for her horse
17 to be shipped from England to Albany. Clare did a lot of
18 things to help her financially and whatnot.

19 She joins DOS; and is in DOS. And she talks about a
20 single episode with Keith that I want to talk to you only
21 briefly, because I'm going to ask a few questions once we go
22 through it.

23 What she says is that Keith brings her upstairs, I
24 think 2 Flintlock, goes down on her, performs oral sex on her.
25 The way she described it is she manifested that she was

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1 enjoying it, that's what she says. And then I think what her
2 testimony is, and this isn't exactly a quote but awfully
3 close, she says I never had an orgasm before. Then all of
4 sudden I had an out-of-body experience and then it ended.

5 Here's my question. What is that? Why is Keith
6 doing this? And nothing else happens as part of that episode,
7 and then nothing else happens again.

8 The only sexual connection between Sylvie and Keith
9 is that. There is this one incident of oral sex where Keith
10 performs sex on her, she appears to have an orgasm. There is
11 nothing else. There is no intercourse. There is no other
12 oral sex events. Then they never have another sexual
13 encounter. What is that?

14 And here's what I want you to think about. We went
15 through the chats, the chats that Sylvie and Keith had. And
16 you now have the Cami chats. You have a lot of evidence of a
17 lot of written communication between Keith and other people.
18 I suggest to you, if you could do such a thing, figure out
19 what the ratio is of talking about sex or just talking about
20 intense things and actual sexual contact. The ratio is like
21 100,000 to one.

22 Here is why I'm bringing this up. I think it's a
23 fair question to ask: What is Keith trying to get? What is
24 Keith searching for? Is it really sex?

25 Because I think there are a lots of things you heard

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1 in the evidence that show there were certain periods of time
2 Keith couldn't have sex, okay. I think Nicole said that at
3 different points. I think Nicole said, if I'm not mistaken,
4 she and Keith had intercourse three times, a few times, some
5 discreet amount of times. In one of the Camila chats, you'll
6 remember it because how can you forget it, Keith is sort of
7 berating her for being with this other guy. And there is talk
8 about penis size and all this other stuff. And Camila writes,
9 You haven't been -- I can't remember what she said -- you
10 haven't been to your fullest in a long time, or something like
11 that.

12 So I submit to you that what Keith is really after
13 isn't exactly sex.

14 Let me tell you what I mean by that. So much in
15 this case is about what opens people up. What stops them from
16 being all self-contained. Some people like being
17 self-contained, I'm happy being this way, I don't want to be
18 meaningful with other people, I'm happy in this little space
19 that I'm in. But some people aren't happy being like that,
20 and some people want more than that. The question is, how do
21 you get people out of themselves.

22 I think what you can find in the evidence that Keith
23 is actually chasing after, I don't think he's chasing after
24 sex, per se. What he's chasing after is this thing that
25 happens between people who are attracted to each other. I

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1 think attraction causes you to kind of come out of yourself a
2 little bit. I think attraction causes you to reach into the
3 space between people and be not so much confined in yourself.
4 Okay.

5 And I think this is something we've all experienced,
6 I hope everyone in the world has. That you're attracted to
7 somebody and all of a sudden things change. Everything
8 changes, your view of yourself changes, things that you talk
9 about in terms of yourself changes, things that you're
10 interested in them change, they are interested in you. And
11 all of a sudden you're having a discussion, you're having an
12 interaction that people who aren't attracted to each other
13 just don't have.

14 And so I think if you can kind of like take strands
15 of this case, from all these different places in the case, if
16 you can take strands of the case from the communications, from
17 the chats, from what we know about the details of some of
18 these intimate relationships, what I think the place you get
19 is Keith is not really looking for the actual act of sex.
20 He's looking for that -- he's looking for that thing. That
21 kind of special, rare -- maybe not so rare, it shouldn't be so
22 rare, that special thing that happens when people are engaged
23 in each other in that way. Because that is what all the
24 evidence in the case points toward.

25 You're going to get all the Camila chats when you go

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1 in the back. They are exhausting. They are exhausting in
2 their length. They are exhausting in their breadth. It's
3 constant. There is chats at times every three minutes for
4 hours on end, day and night, talking about these. They are so
5 intense and they are so unrelenting, that if you really sit
6 down and read them in one sitting you leave exhausted. There
7 is no sex in it. It's the connection. That's what he's
8 chasing after.

9 And that seems to be what all this is moving toward.
10 It's not because -- it doesn't make sense if he's Sylvie's
11 Grand Master, okay, and he can have supposedly sex with Sylvie
12 as much as he wants, presumably in any way that he wants, and
13 the only thing, the one thing that he did was what we just
14 talked about, it doesn't make sense that at the end of the day
15 this is about sex for him. It doesn't. Because the evidence
16 actually points away from that being the case.

17 Now, it's sort of a subtle distinction. I'm trying
18 to think of an analogy. Sex this is star. And around the
19 star is this gravity. And there is a feeling, there is a
20 feeling around sexual attraction that could have nothing to do
21 with eventual sex, but there is an attraction. And the
22 attraction makes two people different. And it makes people
23 talk about different things in a different way. It makes you
24 share yourself. It makes you share yourself in a way that you
25 wouldn't ordinarily. Or you wouldn't go to a person that you

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1 weren't interested in. I think what you're trying to do is
2 try to bridge that distance. Because you're attracted.

3 It's the real definition to the word. You're
4 attracted to this person, you want them, you want to
5 understand them, you want them to understand you. And in this
6 the process something happens. That's I think what Keith is
7 chasing after.

8 I think every single drop of evidence in this case
9 points in that direction. And the point is, in terms of the
10 charges, none of that amounts to commercial sex. It's just,
11 commercial sex is on a different, is in a different universe
12 from that, from what I'm describing to you.

13 And there is no evidence, truly no evidence that DOS
14 was created with commercial sex in mind. Sex for value.
15 That's just not what it was.

16 And it can't be like a gimmick. Like, well, there
17 is sex and then somebody drove somebody to the airport and
18 driving someone to the airport has value. There is sex and
19 then somebody wrote a song for Pam's memorial.

20 No. That has to be a point. That has to be the
21 point of this. It's clearly not the point of this. It's
22 clearly not the point of this.

23 So why DOS? Why? One thing that has not really
24 been discussed is the context. What is going on in Keith's
25 life in 2015/2016. We know that Keith was very close to

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1 two -- lots of people -- but two in particular, Barbara Jeske,
2 that's one of the long-term relations that he had, and Pam
3 Cafritz.

4 Barbara Jeske dies in 2014, I think is the testimony
5 at trial. And Pam Cafritz in 2014 has cancer, and she doesn't
6 die until later.

7 Now, I think there is evidence in the record that
8 Keith, and certainly evidence in terms if we look at the
9 Government's chart here, woman, woman, woman, woman, woman,
10 woman, woman, woman, woman, woman, woman, woman, a couple of
11 guys on there.

12 Do you remember when Mark Vicente was testifying and
13 he's talking about a conversation that he has with Pam
14 Cafritz? And Pam Cafritz says, maybe you and Keith can be
15 friends, he doesn't have a lot of male friends. Pam knows him
16 the best. There is not a lot of evidence of him having male
17 friends.

18 What seems to pretty clear is he relates better to
19 women. He does. Not in a bad way, not in a negative way, not
20 in a condescending way. I don't think there is anything in
21 the case to suggest that Keith has a misogynist view of women.

22 NXIVM was run by women. I mean, Nancy Salzman ran
23 NXIVM along with Keith. These women who had critical,
24 important, long-term roles in his life all played tremendously
25 central roles in NXIVM. So he put his great trust, his

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1 greatest of trusts, in these women. So there is no reason to
2 think that somehow he has a view that women can't do the job;
3 women can clearly do the job. And so I think that he just
4 relates to women.

5 I think there is every reason to believe that his
6 view of DOS of being something big, something transcendent,
7 lots of different women, women who could do things for women's
8 causes, things like that, is absolutely legitimate.

9 It wasn't just the subject of testimony, and it was
10 the subject of testimony as something that Keith would say,
11 it's on the tapes, it's on the tapes. Tapes that Keith had no
12 reason to think would be played at his federal criminal trial,
13 it's on the tapes. He wants DOS to be something bigger than
14 just, I think, I don't know what Lauren Salzman said, 100
15 members, or 100-something members of DOS.

16 Let's stop there for a second. There is 100 members
17 of DOS. You heard about sexual contact with what, a handful
18 in DOS, in DOS and through DOS, a handful. Over 100 members.

19 But getting back to the primary topic, I think he
20 had every reason, and you have every reason to credit the
21 testimony, that's what he wanted it to become. Not because he
22 wanted them as sex partners. He was just doing in his life
23 what he's been doing in his life for the last 20 years. I
24 mean, he has sex with multiple women, as we all know that, it
25 was one first facts we established in this case. Is this part

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1 of what he views as his legacy?

2 By the time DOS is created, he's in his early to mid
3 50s. I think he knows Pam is going to die. And then she ends
4 up dying. Barbara Jeske just died. And he's thinking that
5 some day I'm going to die. This person who was with me so
6 long is soon to die, what does this mean for me, Keith
7 Ranieri.

8 I think DOS is created with the best of intentions.
9 I don't think it's created for sex partners. I think it's
10 created for the best of intentions.

11 I think it's important that each of the groups are
12 different. If it's the case that in Allison Mack's group, sex
13 was more common. I think that's because of how Allison Mack
14 viewed Keith Ranieri. Not from a negative point of view, but
15 possibly from a positive point of view. There is something
16 about, I don't know, maybe he's safe; maybe because we're not
17 going to get married; maybe because he's not going to want to
18 you know settle down with me; maybe because this is something
19 that so many other people have done; maybe it's somehow safe.

20 And I can experiment, and maybe that's of interest
21 to some people. Maybe that's something at one point of your
22 life you would say, that's a nice to have a safe place where I
23 can be sexual without strings attached, without any
24 consequences.

25 So I think it's individual. It's not across the

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1 board.

2 At one point there is a tremendous shift in
3 perspective and virtually every witness who was with Keith
4 testified in one form or another to this tremendous shift and
5 perspective that each of them went through. They say things
6 like, at the time I thought; but now looking back at it I
7 think. That's the shift of perspective. How did this come
8 about?

9 I suggest it comes about because of a series of
10 steps. Jay leaves DOS. And remember, when Jay leaves DOS she
11 takes a lot of collateral that she could get her hands on with
12 her, because she wants that as her safety net. She take it is
13 with her. At around the same time Mark Vicente leaves NXIVM.

14 Now Mark Vicente is a very important figure in
15 NXIVM. He really was in many ways for a long time like
16 Keith's number two guy. He's very high up in the
17 organization. I think he has a lot of respect and I think him
18 leaving NXIVM was a real blow.

19 And he leaves NXIVM, and then a lot of things start
20 happening, and a lot of people start talking to each other.
21 I'm not saying it's bad that they spoke to each other, it's
22 utterly natural that they spoke to each other. But it's
23 important in terms of the shift in perspective.

24 Vicente understandably is concerned, worried,
25 something about the fact that there is this thing going on in

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1 the form of DOS, that he knows nothing about because he's
2 pretty high up in NXIVM, so why doesn't he know about it. It
3 makes sense that he's suspicious of it right off the bat.

4 Also it sounds bad. It sounds bad. We don't know
5 exactly what Jay told him. We know he was talking to
6 everybody. At one point he testified that he had spoken to
7 over 20 people. So we don't know exactly who he spoke to, but
8 we can assume that he spoke to over 20 women. And so it makes
9 sense that he's going to be concerned about this. And he's
10 going to be worried about it and going to think something
11 nefarious and terrible is going to happen.

12 He then contacts Catherine Oxenberg, India's mother.
13 And I think this brings it to another level. Because, quite
14 understandably, Catherine Oxenberg being a mom is going to be
15 very concerned about what is happening with her daughter. And
16 at this point India is still in DOS. India is still in NXIVM.
17 India is not seeing the world the way Mark Vicente is seeing
18 the world, and she's still in it.

19 I think a battle ensues, you can see this from the
20 evidence, of who's side is everybody going to be on. Are you
21 going to stay aligned with DOS and NXIVM; or are you going to
22 come to Mark Vicente and other people and kind of renounce
23 DOS.

24 I think what happens, is what often happens in
25 discussions or arguments, both sides dig in. Vicente I think

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1 becomes convinced this is evil. He used the world evil a few
2 times on the witness stand. This is not a matter of opinion,
3 this is not a matter of interpretation, this is not a matter
4 of one's own decision. This is sheer and pure evil. We're
5 trying to figure out who is going to jump on that side of the
6 argument and who is not going to jump on that side of the
7 argument.

8 Everybody starts talking. Jay is talking. Sarah
9 Edmondson is talking. Suki is talking. Vicente is talking to
10 all of them.

11 Then on June 2, 2017 Vicente calls Franco Parlato.
12 He once worked for NXIVM. Franco Parlato stopped, he was in a
13 sort of legal dispute with someone and now is a great NXIVM
14 critic, and a blogger. Vicente speaks to Franco Parlato. I
15 think what his testimony is that Catherine Oxenberg spoke to
16 Franco Parlato first, so now Vicente is speaking to Franco
17 Parlato.

18 The reason all of this is relevant is because this
19 is all how it leads to the tremendous change in perspective.
20 There is no middle ground anymore. It's black or it's white.
21 It's evil or it's good. It's only a matter of what side
22 you're going to be on. I think you guys saw that in the
23 testimony.

24 A few people, I think Nicole was one of them, would
25 say, would treat this subject with a certain amount of gray.

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1 There was some good, there was bad. There was some things
2 that I really liked, there were some things that weren't for
3 me.

4 But there is a real strain in the testimony in the
5 black and the white. I think neither one is really valid when
6 a witness comes in here and is like it's bad, it's evil, it's
7 terrible. That's not really that helpful to you because I
8 think it's just too bias. It's just not an authentic genuine
9 helpful view point.

10 (Continued on next page.)
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1 MR. AGNIFILO: (Continued.) But this battle is going
2 on. Now, at one point, if you remember when Nicole was
3 testifying, Nicole said that she had a conversation with Frank
4 Parlato and Parlato said, "I have your collateral." We don't
5 know if Parlato did, we don't know if Parlato didn't but we
6 know from Nicole that that's what Parlato said. And he also
7 said what Nicole said Parlato said is go talk to law
8 enforcement, all right.

9 Here's what you can take from these two aspects of
10 Nicole's testimony, there's a force out there pushing people
11 to one side or the other and in this case Parlato is pushing
12 people to the, you know, Vicente-Catherine Oxenberg side and
13 I'm not for the purpose of this discussion saying one is right
14 and one is wrong, just for the purpose of what I'm talking to
15 you about right now I'm just saying it's two very
16 diametrically opposed camps, okay, and Nicole ends up kind of
17 going that direction but much later in the fall.

18 The way that this plays itself out in terms of I
19 think what you see in the trial evidence is that there's this
20 tremendous change in perspective because once Keith's motives
21 aren't trusted, the entire nature of DOS indelibly changes and
22 what I mean by that is so much of DOS was about trust, you
23 know, so much of it was about trust, you can give us your
24 collateral but you have to trust that we're not actually going
25 to release it. So much is about vulnerability and about trust

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1 and it turns out that when you play with vulnerability and
2 trust, you're playing with fire because while everyone trusts
3 everybody and while everyone is together and on the same page
4 it's okay, okay, but soon as something happens there's this
5 tremendous shift in perspective.

6 And I've been straining for an analogy because this
7 is not -- what happened in this courtroom is not a situation
8 that I think a lot of people can relate to because it didn't
9 happen to you and the only thing that comes to mind is this,
10 and it's an analogy, you guys will consider it for what it's
11 worth: Let's say you have a very strict father, all right,
12 and your father is like you have to get A-s and if you don't
13 get A-s your father sends you up to your room and he keeps you
14 in your room and he says, you know what, you study, you study
15 hard and if you want to get out of your room you bring an A
16 home next time and you go to your room and you study and you
17 miss your friends outside who are playing baseball because
18 you're in your room studying and you do that throughout your
19 high school and college years and you end up, I don't know,
20 being a lawyer, right, and then your father passes away and
21 you look back at your father with this joy in your heart,
22 okay, this gratitude because my father loved me so much that
23 he pushed me to get good grades and I got good grades and now
24 today I'm a lawyer and thank you, dad, you know, thank you,
25 dad, for being hard on me. That's one perspective.

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1 Let's say an angel who has supreme credibility comes
2 from heaven and says to you, you have to know this, your
3 father actually didn't love you, he couldn't stand the sight
4 of you and by making you go upstairs to study was the only way
5 he knew to just get you away from him because he couldn't
6 stand being around you. That change -- you will not view your
7 father the same way again. If you believe that, if you
8 believe that, everything has just changed for you, your entire
9 past has just changed for you and do you remember, and I don't
10 know if you guys saw the movie, some of you mentioned the
11 movie The Sixth Sense. If no one saw the movie, I'm not going
12 to bother. I'm not sure if you guys saw the movie. But it's
13 about perspective changes, it's about perspective changes and
14 a little thing changes your whole perspective, what you
15 thought was true, I thought my father loved me, wanted what
16 was best for me and now I see something different about him
17 and I don't trust him anymore and because I no longer trust my
18 father, I view my childhood differently, it's not the same
19 childhood I thought it was.

20 That's what happened here. That's exactly what
21 happened here. Because there are great forces, they're great,
22 listen, the federal government has come in and these are, you
23 know, very fine FBI agents and Assistant U.S. Attorneys and
24 they represent the Department of Justice and they've basically
25 said this is bad, this is bad, this is a bad thing. And

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1 before that, you know, you had people, Mark Vicente I think
2 had a lot of credibility and he said this is bad, this is
3 evil, don't -- you shouldn't trust Keith, don't trust him,
4 everything you thought, don't think it anymore because it's
5 all different. And so there's this tremendous change in
6 perspective not because the past has changed but because
7 there's this change of perspective in the present.

8 And one of the ways that you know the first
9 perspective which I suggest to you is the only perspective
10 because it's the perspective at the time, it's the perspective
11 as these events were happening, the only way you know the
12 actual perspective is through the written communications at
13 the time and you should trust them, you should trust the
14 emails, trust the text messages, trust that stuff because that
15 is how everybody felt then, that is how everybody felt before
16 the change in perspective and the change in perspective pretty
17 much changes everything. But it's not what people were
18 feeling or going through at the time. All right.

19 I want to talk a little bit about Camila. In some
20 ways I think Camila is the most important person at this trial
21 because she wasn't at this trial, she wasn't here. Neither
22 side brought her as a witness. She didn't testify. If you
23 believe Daniela, Daniela says that she spoke to Camila during
24 the trial. So, we have -- if you believe Daniela, you have
25 every reason to think that Camila knows about the trial but

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1 she's not here. So, we have to figure out what Camila means
2 and how Camila figures into all of these events without Camila
3 actually ever coming here and telling us herself her
4 experience or how she feels about these events.

5 Here's what I think the evidence shows. I think
6 Keith Raniere had a very long-term, intense, loving
7 relationship with Camila, all right. He's not charged with
8 having had sex with her under age so it's not something that
9 I'm even going to talk to you about one way or the other. But
10 I think what the evidence shows is that they are very much
11 emotionally connected and that they have been for a while.

12 And I think what you see in the Camila chats, and I
13 would encourage you to take some time and read through them
14 and get more of a flavor for all of them, is that Camila
15 stands up to Keith, Camila is not a shrinking violet, Camila
16 is not someone who's just getting run over, you know, by the
17 Vanguardness of Keith Raniere. She's not. She pushes back,
18 she puts him in his place. When he gives her a hard time
19 about things, she knows how to stand up for herself and you
20 will see that time and again in the chats.

21 You will also see, I suggest, something about Keith
22 that I think that you see in other evidence as well. There's
23 this notion every once in a while that somehow Keith is like,
24 you know, this -- the Wizard of Oz behind the curtain, this
25 powerful figure. I think if you actually look at the evidence

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1 in this case, what you see is the exact opposite. We hear
2 about Keith having an argument with a woman and hiding in a
3 bathroom, okay. We have Keith just being out of his mind with
4 jealousy and anger because Camila -- I'm not sure anger --
5 read the chats for yourself, I'm not sure it's quite anger.
6 It's unrelenting, it's how could you do this, but how could
7 you do this, but how could you do this, and tell me about this
8 detail, tell me about this detail, and Camila is like, stop it
9 already, I don't want to be -- no, tell me about this detail,
10 I want to know about this detail, this painful agonizing
11 detail, tell me about this detail. He's just beside himself.
12 That's not power. I think that's the exact opposite.

13 At one point when Nicole was testifying I was asking
14 her about that last meeting she had with Keith, I said, did he
15 seem sad? And I was talking about at the time did he seem
16 sad. And she says something like, well -- and I said, what,
17 he's always sad? And she says, yeah, you know.

18 He's not mighty, he's not great, he's not godlike,
19 he's none of those things. He sits there and he creates
20 curriculum, that's his greatness. There's nothing high and
21 mighty about him and I don't think he looks to be high and
22 mighty, I think he looks to have relationships with people
23 that are of a certain type and with a certain level of
24 intensity and you'll see that in the chats.

25 All right. The photos. The government says they

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1 were from two particular dates in 2005, and here's my
2 question, there's no indication that those photos -- well, let
3 me back up. The photos were printed out by the government.
4 There's no evidence that the electronic information that led
5 to the photo ever resulted in a photo from Keith's doing.

6 The state of the information is this, from what I
7 understand, there was a hard drive, there was a Western --
8 whatever it was, the hard drive with the blue circle, all
9 right. There was a hard drive and at one point it seemed to
10 have been hooked up to a Dell computer or some other computer
11 and that Dell computer or the other computer is no longer
12 around. So, what seems to have happened is that these photos
13 were taken from the camera with the serial number as they
14 said, went into the Dell computer, the Dell computer had a
15 backup, went to the backup and then the Dell computer is gone
16 because it's probably obsolete because this is back from 2005
17 but the photos were found by the FBI on this hard drive, okay,
18 which I think at the time that the FBI found the hard drive it
19 wasn't connected to anything. So, it's just there. I mean,
20 you know, it's a very large device, it has a lot of stuff in
21 it and some of the stuff in it are these photographs, not just
22 photographs of Camila but photographs of a lot of different
23 people.

24 But the Camila photographs are completely different
25 to the extent that they constitute contraband, they're

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1 illegal, they're illegal in of itself if they're pornography
2 and, you know, if you find, and the judge is going to instruct
3 you on what the definition of all of these things are, they're
4 not sort of the same thing at all and what I mean by that is
5 the government hasn't charged this as just Keith made these
6 photographs or possessed these photographs, they've charged
7 this that he made these photographs and possessed these
8 photographs as part of his involvement in a racketeering --
9 his involvement in an enterprise, as part of his involvement
10 in an enterprise.

11 There's no evidence that these photographs were ever
12 looked at. There's no -- and I keep saying photographs, the
13 electronic images that could be made into a photograph, they
14 are on a camera, they go into a computer, they go to a hard
15 drive, that's it, that's it. They're not sent anywhere,
16 they're not shared with anybody. You know, the FBI CART
17 examiner, I thought he was very good at what he does, he's
18 very smart, he's very experienced, you know, there's no
19 testimony that these were ever sent anywhere. They seem to
20 have been on a camera, they went to a computer, they went to a
21 hard drive, that's it. They weren't shared, they weren't
22 viewed, no evidence of any of that.

23 How do they play a role in a racketeering
24 enterprise? How do they play a role? How are they part of
25 the common purpose? How are they part of Barbara Jeske's

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1 common purpose or Allison Mack's common purpose or Mark
2 Vicente's common purpose or Jim Del Negro's common purpose or
3 any of the common purpose of any of the people on this little
4 bull's-eye chart here? It's not the common purpose of
5 anybody. It's Keith. It's Keith in his private life, you
6 know, it's not Keith as some head of being in the inner circle
7 and that's what they charged.

8 And like I said yesterday, they charged an
9 enterprise and they have to prove an enterprise and there's
10 two aspects of this, there's the enterprise aspect and then
11 there's something called there has to be a pattern of
12 racketeering activity, all right. So, for the enterprise
13 aspect, we talked about it a little bit yesterday, common
14 purpose. No one knows about it. No one knows about it.
15 Nobody knows about it. Keith seems to know about it. Camila
16 seems to know about it. Nobody else knows about it. It's an
17 absolute drop dead secret.

18 The other thing is in the pattern of racketeering
19 activity is that the acts have to be related, all right. So,
20 all of the eleven acts that are in the racketeering charges,
21 they have to be related in one form or another. And the
22 government might say, well, they're related because, you know,
23 Camila is in DOS or they're related because there are other
24 photographs, but there being other photographs doesn't mean
25 that somehow the fact that these are, you know, alleged child

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1 pornography is like anything else in the case, and I'm going
2 to give you another analogy.

3 You and I go to a bank, say you and I are friends,
4 we go to the bank. You go with me to the bank the first time,
5 go the second time, go the third time. The fourth time you
6 and I go to the bank I rob the bank. You didn't know I was
7 going to rob the bank. I'm using the same personnel to go to
8 the bank. Maybe you even told me where the bank was. But
9 there's a certain central fact that you didn't know and it's
10 such a central basic fact that you don't know that it defeats
11 any commonality, any common purpose that we might have and
12 that is the case with these photographs.

13 So, I suggest to you that the photographs in and of
14 themselves really defeat the enterprise element that you have
15 to find beyond a reasonable doubt because there's no common
16 purpose to them with anything else and they're not related in
17 terms of any of the other racketeering activity.

18 Now, ultimately you have to find that the government
19 has proven the charges beyond a reasonable doubt. For you to
20 find a racketeering act, you all unanimously have to find that
21 the racketeering act was proven beyond a reasonable doubt.
22 You have to find the existence of an enterprise and the other
23 elements of the racketeering statute beyond a reasonable
24 doubt. And I don't submit that you can do that.

25 If you listen very closely to His Honor's charge and

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1 you listen to the elements very closely and you really link
2 the elements to the evidence, you may very well conclude that
3 a lot of what you heard in the evidence in this case was
4 repulsive, disgusting, offensive, all of those things, but we
5 don't convict people in this country for being repulsive or
6 offensive. We convict people in this country because Congress
7 passes a statute with certain elements and that statute with
8 the elements that Congress passed is violated and the proof of
9 that violation is proven to a jury like yourselves beyond a
10 reasonable doubt.

11 So, I'm going to sit down in about three minutes and
12 I'm never going to have the chance to speak to all of you
13 again so let me end on this note, the attention that you've
14 paid has been remarkable. The demands that we put on you have
15 been remarkable as well. You've all been here every day early
16 and on time and really helped us out a tremendous amount and I
17 just want to say thank you. I want to say thank you for your
18 attention, thank you for trying so hard and you really do I
19 think have one of the hardest jobs to do that I can imagine
20 because I can't imagine the courage that it would take after
21 sitting through the evidence at this trial and acquitting
22 Keith Raniere, I can't imagine the courage that that would
23 take because everything in your innermost being might say to
24 you, I can't do that, that was wrong, so many things that he
25 did were wrong, so many things that he did offended me and I

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1 can't do that. But if you go back, and you get instructed by
2 Judge Garaufis, and you really sit down and you go through the
3 elements of the actual charges and you say, you know what, I
4 don't like DOS but I don't think it is about commercial sex, I
5 don't like DOS but I don't think the coercion or the fraud was
6 for the purpose of causing commercial sex, you have to find
7 him not guilty of those counts. You would have to check not
8 guilty all the while thinking, gosh, I wish I didn't have to
9 but that is part of your duty is to follow the judge's
10 instructions in terms of proof beyond a reasonable doubt and
11 listening to every element of every offense.

12 You might find so many things about him distasteful
13 but a lot of them, most of them aren't part of the charges and
14 so when you get that jury summons, you know you're doing
15 something that's monumentally important in terms of really
16 serving your country but you're also doing something that's
17 monumentally difficult and that you're really now a part of
18 our system, you're an extension of the court, you're an
19 extension really of our society, of our community, you know,
20 and what our rules are is that unpopular ideas aren't
21 criminal, disgusting ideas aren't criminal, disgusting
22 lifestyles aren't criminal, specific things that violate
23 tangible crimes passed by Congress are criminal and nothing
24 else. So, again I just want to thank you for all of your time
25 and attention.

SUMMATIONS - MR. AGNIFILO

1 Thank you, Judge.

2 THE COURT: All right. We're going to take a
3 five-minute break and then we'll have the rebuttal. All rise
4 for the jury.

5 (Jury leaves courtroom.)

6 THE COURT: All right. We'll take five minutes.

7 MR. AGNIFILO: Yes, Judge.

8 (Recess taken.)

9 THE COURT: Please bring in the jury.

10 MR. LESKO: We will be using the Elmo.

11 THE COURT: Elmo?

12 MR. LESKO: Yes.

13 THE COURT: Yes, we're all set on the Elmo.

14 MR. LESKO: Great.

15 (Jury enters courtroom.)

16 THE COURT: Please be seated.

17 At this time we'll have the rebuttal of the
18 government.

19 Mr. Lesko, you may proceed.

20 MR. LESKO: Thank you.

21 THE COURT: And your microphone is on?

22 MR. LESKO: (Indicating.)

23 MR. LESKO: Good morning.

24 A JUROR: Good morning.

25 A JUROR: Good morning.

REBUTTAL SUMMATIONS - MR. LESKO

1 MR. LESKO: We're almost done. I want to join my
2 colleagues in thanking you for your attention and your
3 patience during the past six weeks. You heard a lot of
4 witnesses. It's a complicated case. It's an important case.
5 You paid attention and it's been remarkable really.

6 And you've heard that the government, the government
7 bears the burden of proof and we have the opportunity to
8 provide the final say, the final rebuttal argument and that's
9 what I'm going to do today and I'm going to ask you to bear
10 with me a little bit, I'm going to try to be efficient, I'm
11 going to try to be fast but Mr. Agnifilo spoke for over three
12 hours so there's a little bit to discuss here, okay.

13 Before I get to what Mr. Agnifilo argued, let's talk
14 about what's not in dispute in this case, okay. What's not in
15 dispute is interstate or foreign commerce, you didn't hear
16 anything about that. And you heard evidence that Nicole lived
17 in Brooklyn, New York and you heard evidence about witnesses
18 and victims traveling through JFK Airport and you heard --
19 remember that little piece of evidence about the Domino's
20 purchase on the Cafritz credit card in Brooklyn, so venue is
21 not in dispute, okay, in the Eastern District of New York.

22 There are no arguments and I would suggest no
23 dispute that the defendant knew the inner circle, that they
24 knew him, that he was extremely close with each and every one,
25 each and every member of the inner circle and that they

REBUTTAL SUMMATIONS - MR. LESKO

1 revered him, they worshiped him, no dispute about that.

2 Mr. Agnifilo even admitted here before you yesterday that the
3 defendant was part of DOS. That's no longer in dispute.

4 So, let's talk a little bit about what is in dispute
5 and before I get to that I want to make a point and that is
6 that in many, many of his arguments on the issues in dispute
7 time and time again Mr. Agnifilo attempted to confuse you and
8 attempted to distract you, distract you from the evidence, the
9 evidence that proves that his client, the defendant, is guilty
10 of the crimes charged because Mr. Agnifilo does not want you
11 to focus on the actual evidence in this case, the evidence
12 that proves the defendant guilty beyond a reasonable doubt.

13 Do you remember when Mr. Agnifilo kept -- throughout
14 his summation he kept saying, I think this, I think that, I
15 think Mark Vicente is a good guy, I think Lauren Salzman, she
16 was telling the truth, remember that. Mr. Agnifilo represents
17 the defendant, ladies and gentlemen, he's a defense counsel.
18 What he thinks, whether it's what he really thinks or
19 something else, it doesn't matter, it's simply irrelevant.
20 It's what you think about the actual evidence in this case
21 that matters. What Mr. Agnifilo says or thinks does not
22 change the actual evidence in this case, testimony under oath,
23 video recordings, audio recordings, the documents, the
24 physical evidence, the mountain of evidence that you heard
25 over the past six weeks. What he says doesn't change that.

REBUTTAL SUMMATIONS - MR. LESKO

1 What he says is not evidence. The questions he asked are not
2 evidence. What I say here right before you is not evidence.
3 Speculation is not evidence. Guessing is not evidence.
4 Theories are not evidence. You heard a lot of theories from
5 Mr. Agnifilo, they're not evidence.

6 As I mentioned to you, the evidence is what you
7 heard from the witnesses and the exhibits, the trial
8 transcript, thousands of pages of it, and it's your
9 recollection, what you recall that matters. And it's been a
10 long trial so please remember during your deliberations you
11 can ask for the evidence, you can ask for the transcripts, you
12 can ask for the exhibits, you can ask for page numbers, you
13 can ask for testimony from a specific witness, you can ask for
14 a particular topic and you'll get it, the judge will give it
15 to you, and do that if you need to.

16 I'd like to take a few minutes to talk about the
17 witnesses. In evaluating which witnesses to credit and not to
18 credit, the judge will give you some guidelines about witness
19 credibility and some of the questions you may want to ask
20 include does the witness seem honest, does the witness have
21 any particular reason not to tell the truth, was what the
22 witness said supported by other evidence?

23 And I would suggest to you in Mr. Agnifilo's closing
24 that he really didn't attack any witness except for Daniela,
25 okay, he attacked Daniela. Why did he attack Daniela, because

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1 he has to, because Daniela testified for five days in front of
2 you in excruciating detail laying it all out, the confusion
3 and the specifics. It's your job to determine whether or not
4 Daniela was telling you the truth and no one is better
5 positioned than you, you sat, what, ten feet from her and saw
6 what happened.

7 When you evaluate the government's witnesses and I
8 would suggest to you when you evaluate Daniela's testimony,
9 you will conclude that it makes sense, that it's reliable and
10 that it is backed up or corroborated by other evidence, the
11 emails, the writings, the other testimony from other
12 witnesses.

13 You can't take Daniela's testimony in a vacuum.
14 Think of Lauren Salzman's testimony about Daniela, you put
15 those pieces of testimony together and they create the full
16 picture, the full tapestry of what happened in this case. And
17 each witness had very specific information to share with you,
18 a specific perspective on the defendant's conduct and I submit
19 to you you know they were telling the truth for two reasons,
20 the testimony of each of those witnesses backs up the
21 testimony of the other witnesses, they fit, they don't fit
22 perfectly I would suggest to you and that makes sense, nobody
23 remembers everything the same way, but they fit.

24 The second reason you know they're telling the truth
25 is each witness gave you limited testimony. They didn't

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1 generalize or stretch. They gave you specific information
2 about what happened to them, what they observed and those
3 specific pieces of information, again, fit together.

4 I'll give you an example, you heard from Nicole and
5 you heard from Sylvie and their experiences were very similar,
6 weren't they, but was there any indication that the two of
7 them interacted, that they colluded, that they even knew each
8 other, and think about what happened to them, very similar.

9 So, it's your job to figure out how these details
10 fit together and I would suggest to you when you do that, when
11 you do that work you'll realize that the details do fit
12 together and that the witnesses are telling the truth and when
13 you consider all of their testimony together, I submit to you
14 that the full picture of the defendant's criminal enterprise
15 comes into focus. All right.

16 So, let's talk about Mr. Agnifilo's arguments. He
17 started out by talking about the enterprise, remember that,
18 and asking if there was a common purpose, a common purpose.
19 It was interesting though because later he basically answered
20 that question, it was when he was talking about Lauren Salzman
21 and he said the defendant made her life possible, do you
22 remember that, and then he said something to the effect of he
23 made it possible for everyone. That's important here. He
24 made everything possible for this inner circle.

25 And what's also important is the enterprise here is

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1 not NXIVM and it's not DOS. The indictment alleges that the
2 purpose of the enterprise was to promote the defendant and to
3 recruit new members into DOS and into NXIVM. The indictment
4 further alleges that by promoting the defendant, members of
5 the inner circle expected to receive financial opportunities
6 and personal benefits including increased power and status
7 within the enterprise.

8 We do not have to prove a common purpose between
9 NXIVM and DOS. NXIVM is not the charged enterprise. DOS is
10 not the charged enterprise. The defendant and his inner
11 circle are the charged enterprise, a group associated in fact,
12 that's the charged enterprise. So, Mr. Agnifilo just got it
13 wrong.

14 And you know and I don't -- I would suggest there's
15 no dispute about that, that the defendant was the leader, the
16 Vanguard, the grand master. He controlled everything, every
17 decision, literally every single decision went through him.
18 You know that there was no doubt who was in charge.

19 So, let's talk a little bit about the racketeering
20 acts, okay, and I'll take them roughly in the order -- address
21 them in the order roughly that Mr. Agnifilo did with one
22 exception, I'll explain that when I get to it, but let's start
23 with Racketeering Act 1, that's the identity theft of Ashana
24 Chenoa. So, basically Mr. Agnifilo argued that, if I recall
25 correctly, Daniela made the fake ID. That was essentially the

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1 argument.

2 What did the evidence show. Well, the evidence
3 shows that Daniela told you that the defendant's plan was to
4 have her cross the border, the Canadian border into the U.S.
5 with a fake identification and Kathy Russell met her and took
6 her across the border and you know that Kathy Russell was in
7 upstate New York near the border, Mr. Agnifilo acknowledged
8 this, she bought gas at a gas station in I think it was
9 Clifton Falls which is sort of near Niagara falls or on the way
10 to Niagara falls. And you know that Daniela was terrified
11 about the border crossing and you know that when they got to
12 the border crossing she told the Border Patrol -- asked about
13 the weather and adrenaline is pumping, heart is pumping and
14 they are allowed to cross the border and you know the records
15 show that Lisa Chenoa, that was Ashana Chenoa because it was
16 her birth date and her last name and that you also know that
17 Lisa Chenoa was on the records as crossing the Canadian border
18 on Christmas Eve, you remember that. And you know that Ashana
19 Chenoa was a real person because you saw her death
20 certificate, you saw her driver's license and you know she
21 died in a car wreck.

22 It doesn't matter that the fake identification, the
23 sheriff's identification used the first name Lisa, the use of
24 the Chenoa last name and her date of birth is enough to
25 qualify as a means of identification. And how do you know

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1 that the defendant's plan involved the use of fake
2 identification of an actual person, how do you know that?
3 Well, I'm going to say something that sounds obvious, you know
4 it because Ashana Chenoa was a real person and her information
5 and her name, her date of birth was used on the identification
6 and the defendant led a plan that used that information in the
7 sheriff's identification so you can probably period, put --
8 stop there and that's been established but there's more.

9 You know that the identification was going to be
10 used at a border crossing where there was going to be sort of
11 a heightened level of scrutiny, I mean this wasn't like a
12 teenager buying beer at a 7-Eleven or something like that.
13 This was going to be a border crossing and that they would
14 use -- the defendant certainly, careful as he was, would use a
15 real person's identity to survive that level of scrutiny, the
16 possibility that the information provided would be run through
17 databases and so forth at the border and you know that the
18 defendant was the decision maker so it's safe to infer like
19 everything else that ultimately the decision to use the Chenoa
20 identity was ultimately his to make and he made it.

21 And you know that the defendant went to great
22 lengths to get Daniela across that border, he sent two of his
23 closest associates, Kristin Keeffe and Kathy Russell, sent
24 them, dispatched them, had them transport Daniela across the
25 border and that meant this was very important to him. He

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1 didn't want to risk failure, further allowing you to infer
2 that he knew that Chenoa was a real person, took risk out of
3 that equation.

4 You also know that Kathy Russell was the one who
5 took responsibility for this, for getting Daniela across the
6 border because she used that as leverage, do you remember
7 that, she used it as leverage to get Daniela to participate in
8 sex, in threesomes with the defendant, remember that. And I
9 would also suggest to you that it's perfectly understandable
10 that after that blast of adrenaline at the border and getting
11 into the United States that Daniela's memory right after
12 faded. Think about it in your own lives when you have that
13 sort of experience, that tense, stressful experience, right
14 after is sort of like a blur and I would suggest to you that's
15 what happened here.

16 Now, much was made, Mr. Agnifilo made a lot out of
17 the Kristin Keeffe theory, it's a theory, the theory is that
18 she's a free agent, she's acting on her own, maybe she's the
19 mastermind, maybe she's doing all this bad stuff, I don't
20 know, I couldn't quite make all of it out, but he definitely
21 points the finger at Kristin Keeffe.

22 (Continued on next page.)
23
24
25

REBUTTAL SUMMATIONS - MR. LESKO

1 MR. LESKO: (Continued.) And you know that's not
2 true. You know that she wasn't a free agent. You know that
3 the defendant, like many crime bosses, gave orders to his
4 associates to execute, to execute all those orders.

5 And Kristin Keeffe was, for a period of time, one of
6 his closest and most trusted associates and she executed many
7 of the defendant's orders. And you know that Kristin Keeffe,
8 like, all the members of the Inner Circle didn't do anything
9 without running it by the defendant. You know this
10 specifically about Kristin Keeffe because Daniela told you
11 that. You remember the morning meetings? In fact, what we'll
12 do is, let's go through and Alex is going to help me, I'm
13 going to go old school on this. We're going to use the Elmo.

14 So I'm going to show you Daniela's testimony at
15 Page 2516 and let's start with Line 13. Actually, start with
16 Line 11.

17 "QUESTION: Can you explain a little bit about that
18 back and forth how that back and forth would work?"

19 "ANSWER: Yes. So the interactions were obviously
20 Kristin, like, was actually out in the field, like, doing the
21 work. Like she was -- is the one actually doing things. But
22 she would also, she would always be there going back to Keith
23 reporting on what was happening. So he was fully aware of
24 everything that was happening and would be the one thinking
25 about the things. And when they interacted, clearly, she

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1 presented certain options and this was going on, this is going
2 on with so and so. So it would be all of the specifics and
3 Keith would be the one to decide so he would have a last say.
4 He would say, okay, I think you're right, I think you should
5 do this, or he would come up to the idea or he would," next
6 page, "tell her you should try to do this or you should try to
7 get that. But it was very clear to me that it was Keith that
8 was making all of the decisions."

9 That was 2516.

10 Do we have 2507? If you go to 2507, just a couple
11 pages before that, Daniela is talking about sort of the
12 process of the morning at Flintlock and how Kristin Keeffe
13 would come downstairs, start of the day, remember that, with
14 the hair in the rollers and discuss legal matters with the
15 defendant. Literally, like, the first conversation of the day
16 was with Kristin Keeffe on a very regular basis. And she's
17 reporting to him, asking him for permission, similar to the
18 transcript we just read. She didn't do a thing without
19 getting direction from the defendant. She reported everything
20 to the defendant. She was one of the executors in the
21 enterprise.

22 I should also point out here that Racketeering
23 Act 1, like some of the racketeering acts have, like, parts A
24 and B and parts A, B, and C. These are called subpredicates.
25 And what they mean you find any one of them is committed, and

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1 not that all of them have been committed but any one within a
2 racketeering act you must find the defendant guilty of that
3 racketeering act. They're called subpredicates.

4 Let's talk a little bit about racketeering act --
5 and I'm going to group 5 and 7 together because they're sort
6 of go together and those are the key logging racketeering
7 acts.

8 And Mr. Agnifilo spent quite a bit of time talking
9 about key logging. This is the conspiracy to key log and the
10 key logging of James Loperfido, Edgar Bronfman, and Marianna.
11 And, again, essentially, Mr. Agnifilo's argument is pretty
12 straightforward in it that Kristin Keeffe did it. That this
13 was a Kristin Keeffe operation. And we've talked about
14 Ms. Keeffe.

15 Let's talk about James Loperfido. Nice guy
16 according to Mr. Agnifilo. That's for you to decide. But you
17 know why his e-mails were monitored. It was about Mr. O'Hara,
18 Joseph O'Hara, an arch enemy who allegedly did not pay back
19 the \$2 million loan I think it was partly for a vineyard up in
20 New York. And why was this so important, and why this
21 scorched earth around Mr. O'Hara that involved key logging
22 Mr. Loperfido, his business associate? Because Clare Bronfman
23 was involved. The defendant's piggybank who provided him
24 millions and millions and millions of dollars. Tens of
25 millions of dollars throughout the life of this enterprise.

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1 She was the money, she was funneling the money, so this struck
2 close to home.

3 And you know that several of the intercepts of
4 Mr. Loperfido's e-mails actually did involve Mr. O'Hara. We
5 saw the exhibit with the name of Mr. O'Hara's company and I
6 think his son's name, if you recall correctly.

7 You also know, and I'm not going to spend too much
8 time on this, that Edgar Bronfman was an enemy, and an arch
9 enemy. And there are lots of reasons for that we may talk
10 about an e-mail in a bit. The reasons for that are pretty
11 simple and they go back, I think the Forbes article is sitting
12 there somewhere, called NXIVM a cult. Could we have that in
13 the Forbes article. It's not important, you saw it.

14 And you know that the defendant was directly
15 involved, intimately involved, intimately aware of the key
16 logging. Mr. Agnifilo made much of this thumb drive,
17 sometimes the data was on a thumb drive, sometimes it was sent
18 by e-mail. That doesn't matter. I mean Daniela could have
19 taken the data and slipped it under his door for all it's
20 worth, it doesn't matter. What matters is that he was
21 receiving the data, receiving the e-mails on a regular basis
22 that Daniela was mining using the key logging.

23 And you even know from the outset that Daniela was
24 reporting to the defendant when she learned how to key log.

25 Let's pull up Government's 1518.

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1 You remember this exhibit this was sent to the
2 defendant November 6, 2005, and Daniela is doing Internet
3 research trying to figure out how to get passwords user names
4 so they can access the e-mails. And she finds this Magic
5 Lantern program and teaching herself how to use that. So
6 right from the start this is a defendant operation. Right
7 from the start.

8 Mr. Agnifilo also discussed Racketeering Act 7,
9 that's the key logging of Marianna. And that argument I
10 didn't understand quite as easily. I think it was something
11 to the effect, oh, they were living together and he was doing
12 it and she was doing it and they were all doing it and I think
13 it was some sort of he had quasi-permission to access
14 Marianna's Facebook account. Does that make any sense to you?
15 Permission to hack her Facebook account? So I'm going to give
16 you permission to have my sister hack through key logging my
17 Facebook account so you can see my communications on Facebook.
18 If she was going to give permission and she's, you know,
19 according to Mr. Agnifilo, living with the defendant, why
20 didn't she just give him her password. Go look at my Facebook
21 account. Not go have my sister hack into it. Why would you
22 ever do that? And, more importantly, perhaps there's
23 absolutely no evidence that Marianna gave the defendant
24 authority to access her Facebook account.

25 And, just briefly, let's look at some of the e-mails

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1 where the defendant discussed the key logging of Marianna's
2 Facebook account. Government's 1591. And I'll just go
3 through this briefly. You've seen a bunch of these e-mails.
4 Right at the bottom there, it's on the third page. Zoom in.

5 So this is from the defendant on November 5, 2008.
6 "Where are you? Did you get any KYLG stuff?" Key log stuff.
7 The defendant's own words.

8 Next page, right at the bottom. This is just a
9 sampling, I'm not going to go over it all. Right at the
10 bottom. Daniela, to the defendant: "Did you get the Facebook
11 info?" "Yes." Defendant right above responds, "Yes, give me
12 an overview of what these things are."

13 There's no doubt whatsoever the defendant directed
14 Daniela to do the key logging. Received the e-mails that she
15 mined from the key logging. Reviewed them. This was a
16 defendant operation. And if you want to take a look at some
17 e-mails regarding, that relate to Edgar Bronfman, turn your
18 attention to Government's 1543. Those relate, actually, let's
19 take a look at 1543, actually. So 1543, it's a whole
20 collection of e-mails. These all relate to the Edgar Bronfman
21 key logging. And then 1541 is an e-mail from Clare Bronfman
22 to the defendant again discussing her father.

23 And so, you know what the motivation was in terms of
24 key logging Edgar Bronfman's as e-mails. And you know there's
25 multiple communications regarding those.

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1 Remember there was the near friend and the far away
2 friend in some discussion in some of the e-mails. And I turn
3 your attention review government's 1543 and 1419.

4 All right. Let's turn to Racketeering Act 6.
5 That's the videotape racketeering act. You heard a lot about
6 the videotapes, a lot, and I'll try to brief. But you know
7 from the outset Mr. Agnifilo characterizes as a crime on the
8 court, remember that, and he's right.

9 By providing altered videotapes in discovery in a
10 federal case to the federal courtroom like the courtroom we're
11 in here this morning, and having his attorney lie to a federal
12 magistrate judge about it that was indeed a crime on the court
13 and he altered videotapes. Here, Mr. Agnifilo's argument is
14 pretty straightforward. I think it's that Mr. Vicente did not
15 know that the tapes were going to be produced in a specific
16 lawsuit, and that he got the project, the alteration project,
17 mixed up with some other project relating to videotapes. And
18 he's right. He predicted this was a conspiracy account so
19 that specific knowledge about the specific case is not
20 required. All that's required is the agreement to actually
21 alter the videotapes and you know that that happened and we'll
22 talk about that in a moment.

23 And I would suggest to you that the arguments about
24 Mr. Vicente grossly mischaracterize his testimony.
25 Mr. Vicente was very clear at the outset to alter videotapes

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1 and he knew they would be handed over in a case, let's take a
2 look at transcript Page 653.

3 And this is Mr. Vicente recounting his conversation
4 with the defendant. And when he tells the defendant he knows
5 how to put the glitches in the tapes, Line 17, the defendant
6 says, "Oh, that's good. There's some things we need removed
7 the legal department has some things that need to be removed
8 from the tapes and it has to do with a case where our
9 methodology is being evaluated and our patent is being looked
10 at." And right then, Mr. Vicente agreed to the conspiracy.
11 Done, completed right there. But you know it went further.

12 Look at Government's 1397R. You know that
13 Mr. Vicente worked on the project, wrote memos about the
14 project. He told you ultimately that the project was
15 completed and 1397 tells you around the end of June. By the
16 way, you may recall that the tapes were produced July 1, 2008,
17 a couple days before, look at the Monday or Tuesday heading,
18 first and second bullets. Ms. Penza talked about this in her
19 closing. "Duplication of tapes Keith has asked me for. Aging
20 and weathering of the masters." Right there in the memo.

21 So let's talk about Mr. Vicente's understanding of
22 the case and this is maybe where the confusion occurred.

23 Mr. Vicente explained that at the time he thought
24 the lawsuit was a case involving a patent. He later finds out
25 that the lawsuit was specifically the Franco lawsuit. It was

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1 a lawsuit no matter what, but he had specific knowledge of
2 what the lawsuit was later in time.

3 Let's take a look at transcript of Mr. Vicente's
4 testimony are Page 1299 he explains this here and
5 Mr. Agnifilo, in his cross-examination, pulled out a selected
6 question where Mr. Vicente is explaining, "At the time, I
7 didn't know it was the Franco lawsuit. I learned that after
8 the fact, but I knew it was a lawsuit."

9 Okay so, let's take a look at what Mr. Vicente said.
10 1299 and let's start at Line 11.

11 "QUESTION: What videotape alteration project was
12 the bullet referring to?"

13 And we're talking about the memo we just discussed.

14 He says:

15 "ANSWER: "No."

16 What is that referring to? It refers to the
17 extraction of certain things from the Intensive tapes to be
18 handed over and what I thought, you know, was a protected
19 patent-type case to later being told it was part of discovery
20 for an actual case."

21 "QUESTION: So it involved a case?"

22 "ANSWER: Yes."

23 "QUESTION: What is your interpretation of the
24 case?"

25 "ANSWER: Well, what I find interesting was

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1 basically that's the -- there was a legal wrangling going on
2 between NXIVM and I think it is Rick Ross/Stephanie Franco.
3 My understanding was than they had asked to see NXIVM's
4 materials," he next page, "from a particular year."

5 "QUESTION: Let me stop you. That was your
6 understanding of what the actual case but you said a patent
7 case."

8 "ANSWER: Oh, it was more, no. To be precise, what
9 I understood at that point is that there was a case going on
10 and that the patent, I was told the patent was at risk because
11 of this case. That's what I understood."

12 "QUESTION: So you knew there was litigation
13 involved?"

14 "ANSWER: Yes."

15 Mr. Agnifilo also tried to argue that Mr. Vicente
16 confused this project with other projects, you remember That.
17 He's simply wrong and Mr. Vicente explained that.

18 He explained that the digital project, I think it
19 was digitizing some historical tapes that the defendant had
20 made, videotapes were of everything, happened in 2014 when
21 Clare Bronfman brought this expensive machine, I think it was
22 called a Raid machine. You remember that he explained there
23 was a Mexico film project going on. And he said at that time
24 in 2008 that was happening in Mexico, that hasn't happening in
25 Clifton Park. And he was crystal clear that the legal

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1 department videotape project in 2008 was the altering of the
2 videotapes in that case. Crystal clear.

3 Let's turn next to Racketeering Act No. 11. This is
4 the use of the Pam Cafritz American Express card. And
5 Mr. Agnifilo said something interesting. He said that the
6 defendant was doing what he had always done. And you know
7 what, that's true. He always used other people's money. He
8 never used his own money, although it all was his money. He
9 did that to pretend was a renunciate because he didn't want to
10 pay taxes.

11 But this was a little different, right? And why was
12 it different? This time he used a dead person's money.

13 Let's keep this one real simple, folks. Pam Cafritz
14 died. She couldn't give authorization to use her credit card.
15 Dead people can't give authorization to use their credit cards
16 from their graves. Mr. Agnifilo mentioned something about the
17 defendant being entitled to the trust or the estate, but why
18 hadn't he received the estate. Why was he continuing to use
19 this credit card time and time again for years and pay for the
20 balance out of the Key Bank account because he didn't want to
21 pay taxes.

22 I would note also there is nowhere in the indictment
23 where it says, "income tax." It says, "federal tax," and you
24 know the defendant was obsessed with not paying taxes. You
25 know that because you saw the declaration, I think, it's

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1 Government's 762 in that federal Texas case where he said he
2 didn't have money to pay the \$400,000 fee that was imposed on
3 him. That was a bald faced lie.

4 How do you know that? He could have paid it on the
5 credit card. He could have paid it out of the Key Bank
6 account. He had access to hundreds of thousands of dollars
7 just there. And you saw all the charges during that time
8 period, so you know he had access to this credit card. Yet,
9 he told the federal court that he had no assets when he had
10 half a million dollars in cash hidden in Nancy Salzman's
11 house. Come on.

12 And you know he was obsessed with taxes. You know
13 that he spoke about it at the Intensive that Stephanie Franco
14 attended because she was startled by what he was saying about
15 not having to pay taxes. James Loperfido told you that pretty
16 much his entire job was to figure out a way for NXIVM not pay
17 to taxes. The ultimate goal was zero taxes. Mr. Loperfido
18 told you the defendant controlled all the companies,
19 controlled everything. Yet, Cathy Russell told Mr. Loperfido
20 that the defendant didn't make any income. Did that make any
21 sense?

22 And, of course, Mr. Loperfido told you about that
23 movie at V Week, remember that? Not paying taxes, some sort
24 of tax protest money movie. And he was concerned about that,
25 wanted to talk to the group and they wouldn't let him.

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1 So we know that the defendant's scheme to maintain
2 the appearance of having no income and no assets while living
3 an expensive lifestyle: Hot tubs, saunas, trips to Mexico,
4 was all done not to pay taxes. And that's why you know the
5 conspiracy to use Ms. Cafritz's credit card was done in
6 connection with the crime of tax evasion.

7 Let's move on.

8 Racketeering Act 8. This is another racketeering
9 act with subpredicates that involve the trafficking of Daniela
10 for labor and services as well as document servitude. Just
11 need one of the subpredicates.

12 I would suggest to you that when it came to Daniela,
13 it was always about work. Yeah, they had a sexual
14 relationship for, I think, it was a couple of years but the
15 constant was work. Before she went in the bedroom, she was
16 cleaning people's houses; she was doing book reports. You
17 remember that? Extensive book reports. She explained that to
18 you in detail. She was doing the key logging. She was
19 following, I guess, following the defendant around documenting
20 his every move. Organizing the library which appeared to be
21 no easy task. Work, work, work, work. That's what it was all
22 about with Daniela.

23 And then when she gets put in the bedroom, it's
24 still about work. But this time she's put to work to fix her
25 issue. She has to figure out and she's given tools to do this

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1 work what are the tools a notepad and something to write with.
2 And what does she do? She works. She writes plans. She
3 writes letters. She writes and writes and writes and writes
4 and you know what's proof of that? Government's 907. Take a
5 look at them. Here's all her letters. Here's all her work.
6 Her work product from that two years in the bedroom.

7 Daniela was also in fear, fear of having to go back
8 to Mexico. Fear of encountering law enforcement, getting
9 deported. Fear that she didn't have her papers. She didn't
10 have her birth certificate and fear that she would lose
11 communication, lose contact with her family. It was a climate
12 of fear that surrounded her when she was in the bedroom.

13 And when she finally left, it's taken to the border
14 and she went back to Mexico, it was back to work. Work. So
15 how is she going to get her papers, do you remember how that
16 was going to happen? She had to do book reports again. These
17 damn book reports. And it was so extensive, the volume was so
18 high, she couldn't keep up with it. And then she was back in
19 the cycle -- more work, more work. So it was always about
20 labor when it came to Daniela.

21 I want to point out something else. Do you remember
22 when Mr. Agnifilo said that Daniela was, "Playing games."
23 Remember when he said that? Was that eerily reminiscent of
24 something? Reminiscent of communications between Kristin
25 Keeffe and the defendant when Kristin Keeffe was taking the

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1 defendant to the Mexican border. Your recollection controls,
2 not mine, but if my recollection is right, didn't he, the
3 defendant, say the exact same thing that she's playing games.
4 Maybe he said that when she was in Mexico, but it was after
5 she left the bedroom.

6 And what was Mr. Agnifilo doing by using that
7 terminology by saying that Daniela was playing games? He's
8 blaming the victim. That's what he's doing. It was Daniela's
9 has fault. It's the same blame that the defendant placed on
10 her to convince everybody that what he was doing to her was
11 right. It was Daniela's fault, she deserved to spend the 700
12 days in the bedroom. That's what that argument was about.

13 And didn't Mr. Agnifilo accuse her of stealing from
14 those stores that were listed in that list? Wasn't that
15 eerily reminiscent of something? Didn't the defendant accuse
16 her of stealing? Wasn't that the whole sort of basis for the
17 treatment of Daniela? There's echos in the argument that you
18 heard here today from Mr. Agnifilo from the abuse of Daniela
19 by the defendant even here just yesterday.

20 And incidentally, with regard to stealing from the
21 stores, why would she lie about that? She admitted to
22 stealing money, she admitted to key logging, she did that all
23 under oath in federal court. Why would she make up the story
24 about not remembering? Is she not remembering stealing from
25 the stores?

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1 Mr. Agnifilo also seemed to argue that this was just
2 a family matter. Remember that? That her father was
3 involved. That Daniela was put in the room for 700 days
4 because her father was frustrated. Is there any doubt the
5 defendant had total control over this family?

6 Remember the audiotape with Adriana, Daniela's
7 mother, where the defendant is manipulating her: You kill the
8 child would you go party or something like that. I mean, all
9 this manipulation of the mother to get her on board with this
10 plan to put her daughter in the room. Is there any doubt he's
11 in control?

12 And the father, the father. This is the father that
13 sent his young children to Albany. I guess, ultimately, in
14 the care of the defendant without sending any adult with them.
15 This is the father whose three daughters had sexual
16 relationships with the defendant. Abortions. This is the
17 father whose youngest, Camilla, was having a sexual
18 relationship with the defendant when she was 15. Is that a
19 father in control? Was this just a routine grounding? I
20 don't know about you, but when I was grounded it is like I
21 couldn't go out Saturday night, right? I've never heard of
22 grounding where someone's put in a bedroom for 705 days. I
23 don't know about you. Family matter.

24 How do you know that the defendant and not the
25 father was in control? Well, Lauren Salzman told you that.

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1 Lauren Salzman, let's talk about her for a second.
2 Lauren Salzman, who pled guilty to two racketeering offenses.
3 Lauren Salzman who pled guilty pursuant to this cooperation
4 agreement, Government's 3500-LS-6. Read every single page of
5 this cooperation agreement. And you'll know that Lauren
6 Salzman is facing 20 years in prison. And you know that
7 Lauren Salzman was Daniela's keeper in the bedroom. This was
8 a project that was assigned to her by the defendant, that she
9 was going to be the keeper in the bedroom. And you know how
10 she feels about that. You saw her reaction. In fact, I would
11 suggest that if anything that Lauren Salzman did, I would
12 suggest she feels worse about this, keeping Daniela in that
13 bedroom for two years.

14 So let's look at what Lauren Salzman says about
15 Daniela's father. Transcript 2125. Right at the bottom.
16 Line 25. "Hector, the father, in my experience is an
17 incredibly," we'll go to the next page, "Weak personality and
18 could have been enrolled to be on board if Marianna was on
19 board, or Cami was on board. Like, if the whole family said
20 we're not on board, then I think Hector would not have been on
21 board." End of the question. At Line 7, "He supported her
22 staying in the room; correct? Lauren Salzman's answer, "It's
23 true and he withheld her documents in the end as well."

24 This wasn't led by her father. This was led by the
25 defendant. And how do you know that? We're going to take a

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1 look at some brief he can certainties of Lauren Salzman's
2 testimony where she explains that she reported back to the
3 defendant when she interacted with Daniela in the bedroom and
4 that he was in total control and we'll go through this very
5 quickly.

6 Page 1927 of the transcript, Line 6.

7 "QUESTION: Did the defendant appear confident and
8 secure in that choice?"

9 This is the choice to put her in the bedroom.

10 "ANSWER: Yes."

11 "QUESTION: Did the defendant ask you to keep this
12 project a secret?"

13 "ANSWER: Yes. He told me to the know anyone about
14 it not to discuss it with anyone."

15 Going to Page 1934, Line 4.

16 "QUESTION: And during this period of time, did you
17 report to the defendant?"

18 "ANSWER: Yes. Every time I interacted with her I
19 did report to him."

20 "QUESTION: And what did he tell you in these
21 reports?"

22 "ANSWER: Similar to what I said before. I mean,
23 that, you know, sometimes he would be thinking about what,
24 what should be done and sometimes I would ask him for
25 direction."

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1 Next page is 1937. Right at the top.

2 "QUESTION: Did the defendant give you instruction
3 about what you were permitted to tell Daniela?"

4 "ANSWER: I wasn't permitted to tell her anything.
5 He told me not to tell her. I couldn't tell her what to do."

6 Let's go to the next question on Line 8.

7 "QUESTION: Did the defendant ever tell you that
8 Daniela should remain in the room for longer?"

9 "ANSWER: Yes."

10 Then go down to the last then go down to the last
11 line.

12 "ANSWER: And he told me to come up with a way to
13 fix that. And that a way to fix was staying in the room until
14 the hair grew back."

15 Again, work, fixing the issue.

16 1940, Line 15.

17 "QUESTION: How often did you check in with the
18 defendant about Daniela?"

19 "ANSWER: Whenever I went to see her, but there were
20 times when I wasn't seeing her a lot."

21 Next Page. 1941, Line 3.

22 "QUESTION: Did the defendant express concern about
23 the family interfering with the project at any point?"

24 "ANSWER: Yes. He thought they were interfering
25 with the project."

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1 Let's move on to Page 1966, Line 15.

2 "QUESTION: Did you believe you had authority to
3 determine when and if Daniela would be sent to Mexico?"

4 "ANSWER: No, absolutely not."

5 "QUESTION: Who had that authority?"

6 "ANSWER: Keith. And I don't believe Daniela
7 believed that I had the authority."

8 Page 1985.

9 "QUESTION: Who told you her behavior was
10 manipulative and game playing?"

11 "ANSWER: Keith consistently told me that until we
12 all started to see it that way."

13 Game playing. We talked about that. Lauren also
14 explained that the defendant had to get permission for Daniela
15 to visit the dentist. Do you remember?

16 Let's look at Lauren Salzman's testimony on that
17 point, Page 1958. Right at the bottom there.

18 This is her answer:

19 "ANSWER: I went to Keith to ask if I could take
20 her, or if she could go to the dentist and he said he would
21 think about it. And it took six weeks for him to decide that
22 she could go," next page, "and, I mean, part of her tooth
23 broke off before it was okay to take her."

24 "QUESTION: During those six weeks, did Daniela tell
25 you that she was in pain?"

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1 "ANSWER: Yes, she was telling me that she needed to
2 go to the dentist."

3 "QUESTION: Why did you wait six weeks before she
4 went?"

5 "ANSWER: Because I wouldn't take her unless Keith
6 said that it was okay for her to go."

7 Lauren also explained that she and the defendant
8 exchanged e-mails while Daniela was in the bedroom. And you
9 saw some those e-mails, I'm just going to go quickly through
10 them. Just show them to you, really.

11 Let's start with Government's 1238. And right at
12 the bottom there, after Doom, I think, it says tomorrow is
13 Goldie's birthday and Hector is asking if the family can write
14 her letters. This is Government's 1238.

15 Go to the next page, Government's 1241. First line,
16 this is a 3:46 a.m. e-mail to the defendant from Lauren
17 Salzman, first line. "I'm going to sleep but apparently Bobo
18 wrote a letter that said, "Let me out, I'm coming undone."

19 And Government's 1242 at the top, it is an e-mail
20 from the defendant. This is on November 9, 2010, and just
21 right in the middle there second line. It starts, "Might try
22 asking her the difference between being in the room for a
23 day... or as long as she has."

24 These e-mails are damaging, ladies and gentlemen.
25 Extremely damaging. It indicates the defendant knew she was

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1 in the room at his direction and for a significant period of
2 time that Daniela is coming undone in the bedroom. And to
3 address Mr. Agnifilo's argument, specifically, the first
4 e-mail reflects that the father, the father who is allegedly
5 responsible for this, is asking if he can rite write letters
6 to his daughter. Is he in control? Of course he's not in
7 control. The defendant was in control, complete control like
8 always.

9 Another minor point, but I think it's one that
10 illustrates how Mr. Agnifilo played fast and loose with the
11 facts before you. Remember he mentioned the e-mails forwarded
12 that involved an immigration lawyer that were forwarded to
13 Daniela. I guess the argument is something to the effect that
14 she had the opportunity to consult with this lawyer and didn't
15 avail herself of that opportunity.

16 Let's take a look at it. And I ask you to take a
17 look at it, it's Government's 1554.

18 So if you look, look sort of midway down maybe we
19 can magnify this. Look at that last paragraph that says,
20 "Because." Adrian and Camila. It's throughout, I won't bore
21 you with this. All throughout, this e-mail is about Adrian
22 and Camila and their visa issues. It has nothing whatsoever
23 to do with Daniela. So that's a false impression.

24 There was another misleading argument, and I think,
25 you know, common sense would prevail here and you knew what

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1 was going on.

2 Mr. Agnifilo called Daniela slick, and as an example
3 of that, he pointed to the abortion clinic records where she
4 said she was in the country as an, I think, a student or
5 something like that, wanted to go to college here, that it was
6 misleading. She's there with Pam Cafritz, and you know who
7 Pam Cafritz is, right at the top. Right at the top of the
8 Inner Circle. Pam Cafritz was the fixer. She minded the
9 women and she was there to make sure that nothing bad happened
10 at that clinic and that Daniela had gotten her abortion.

11 Daniela lied at Pam's direction and at the
12 defendant's direction. She didn't want to raise any red flags
13 and they didn't want to raise red flags and they're illegally
14 harboring her. She became impregnated pregnant while they
15 harbored her. Wouldn't that have raised a couple red flags at
16 the clinic? Because they wanted her to have an abortion and
17 you know it was an abortion she had endured alone. And it
18 happened.

19 All right. So let's talk about DOS. Mr. Agnifilo
20 spent quite a bit of time on DOS.

21 Let's start with the arguments you heard today and
22 we'll get back into what was said yesterday a little
23 backwards, but I think we heard some arguments so let's sort
24 of deal with that.

25 First, Mr. Agnifilo claimed that Jay, that the labor

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1 performed by Jay, was all sort of under the delegates program
2 and you know that's not true. I'm not going to spend too much
3 on that. There was some work at delegates. I think Jay
4 indicated she got paid a pittance, if anything, for that work.
5 And then there was an another other set of work as part of
6 DOS. Acts of care, assignments, and specifically you may
7 recall the transcript writing assignment involving Pam
8 Cafritz's memorial and the hours that Jay spent on that and
9 got no pay whatsoever. So this was about labor.

10 I think you also heard that Nicole had the same
11 experience with the transcripts and the Pam Cafritz memorial.
12 She was required to write those transcripts, I think she said,
13 she stayed up like 23 hours or something like that to get them
14 done. Never paid for any of it.

15 Mr. Agnifilo said that the sex in DOS was a small
16 amount. How do you know that? How do you know what the
17 ratios were? I mean, you know there were a lot of
18 photographs, right? But how do you know how much sex there
19 was. And if you want to look at sort of, like, let's do a --
20 the defendant likes mathematical formulas so let's do one.

21 You know there was a high involve of sex because
22 Daniela told you about her sexual relationship with the
23 defendant that almost exclusively involved at all times of the
24 day having to have him drop his pants and having to give him
25 oral sex, right? Two to three times a day I think she

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1 quantified it. So I'm not really good at math, that's why I'm
2 a lawyer, so if it's two years and you have 365 days a year,
3 what is that, that's -- oh, my gosh -- 730 days. And if she's
4 having oral sex with the defendant, let's be fair, twice a
5 day, that's 1,400-plus incidents of oral sex with the
6 defendant with Daniela. So don't come in here and say that
7 there's a small amount of sex going on in this case.

8 Mr. Agnifilo made an argument about this one. I
9 don't understand, but this was all about attraction and a
10 person and some star and gravity, and gravity is pulling
11 people together. I mean, last I looked this is what happened
12 with gravity, all right. It's one way, down.

13 These women were not attracted to the defendant,
14 they told you that. Sylvie told you she had found him creepy.
15 Nicole said she wasn't attracted to him. Jay said she wasn't
16 attracted to him. This isn't about attraction, that's a
17 smokescreen, that's a red herring.

18 And what about the vagina shots was meant to be
19 attractive? How did they help in this
20 star-magnetism-attraction dynamic. The open-leg photographs.
21 How did the dungeon help with that? That tail thing, was that
22 about attraction? Attraction went one way, the defendant's
23 attraction. That's what mattered.

24 Mr. Agnifilo talked about shifting perceptions.
25 Your recollection controls, not mine. But I would suggest to

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1 you that when it came to the three victims in this case and
2 even Lauren Salzman there was not a change in perception.
3 There was a change in perceived control. There was a change
4 in a coercive dynamic. There was a change in extortion.
5 There was a change in dynamic there. But in terms of
6 perception, I think the record reflects that Sylvie, that
7 Nicole when they were having sex with the defendant knew that
8 was wrong.

9 (Continued on the next page.)
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1 MR. LESKO: (Continued.) And knew that was bad. And
2 that Jay, when she was ordered to have sex with the
3 defendant -- you know this for a fact -- she knew that was
4 wrong, she decided to head for the hills. And even Lauren
5 Salzman when she finds out about the sex, she knew that was
6 wrong. Remember the testimony about going to Mexico and
7 having the group orgy. And remember how she was testified
8 about that. She didn't want to do that, she knew that was
9 wrong. She was going to see if it was actually going to
10 happen, that's why she went to Mexico.

11 Mr. Agnifilio talked about what happened in the
12 aftermath of all of this. This fellow, Franco Parlato, and
13 all that stuff. I want to be clear here, the sex trafficking
14 happened when it happened. The aftermath is of no moment.

15 The collateralized sex as a result of extortion and
16 the threat of the release of the collateral and based on the
17 lies that were presented to the victims, DOS, no explanation
18 of the requirements of DOS, no explaining of the assignment of
19 additional collateral or Andy, all those lies when they led to
20 the victims having sex that's the completed crime.

21 So what happens after communications between victims
22 and the defendant, Mark Vicente, Franco Parlato, it's of no
23 moment.

24 Mr. Agnifilio argued that DOS was all about trust.
25 Do you remember that? Trust. It wasn't about trust. If it

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1 was about trust, why do you have to collateralize the slaves?
2 Why do you have to have blackmail material if you trust them
3 so much, if this is a community of trust? Why take naked
4 photos and sex tapes and letters lying about their parents and
5 themselves and secrets and property? Why do you need all of
6 that stuff if it's so trusting. You know that's not true.

7 Mr. Agnifilio went on to tell you the story about
8 the father who makes the son study hard. And the son becomes
9 a lawyer, the angel comes down -- it gets a little crazy. The
10 gist of the story, as I understand it, is that the study, the
11 requirement to study, takes on a different flavor when the
12 angel says the father hates son.

13 Study is not illegal. You can interpret why you
14 were made to study, that's not illegal. What if the father
15 asked the son to perform oral sex on him? Does that
16 perception change? At the time or after? What if the angel
17 said, your father he hated you when he made you have oral sex.
18 It's still illegal. It was illegal then, it is illegal later.
19 It doesn't matter.

20 Mr. Agnifilio talked a lot about the communications
21 between some of the victims and the defendant after they had
22 sex with him as a result of the assignment. I think he also
23 maybe read some of the communications involving Daniela. You
24 know that this, from a psychological perspective, is a very
25 confusing experience for these women. Dr. Hughes told you

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1 about that. And that the process of sort of exiting these
2 sort of relationships, it doesn't happen overnight. It takes
3 time. And it's very confusing to the witnesses. And
4 Dr. Hughes told you that, but the witnesses told you that.
5 And they fully acknowledged that, that was a very confusing
6 process.

7 For Nicole it was particularly confusing, she was
8 still collateralized. Daniela, confusing because for a period
9 of time they still had her birth certificate. And think about
10 that relationship going back to which she was not even 18
11 years old. Very confusing, and that's understandable.

12 So let's talk a little about what Mr. Agnifilio said
13 yesterday about DOS. He started out by saying that the SOP
14 tape was the best evidence of why DOS was formed. Again, a
15 distraction. Was the SOP tape in 2012 about the men's group,
16 like the collateral, you recall this. Collateral was like
17 related to recruitment of new numbers. You had to put a
18 thousand bucks down and if you only recruited three you lost
19 your thousand; if you recruited more than that -- I'm probably
20 getting it partially wrong, but that's the gist of it. I'll
21 bring five people in; if not, I lose my thousand.

22 That was fundamentally different than the collateral
23 in DOS.

24 And best evidence of DOS? Better evidence than the
25 Cami chat? Let's look at Government's Exhibit 1779, page 285.

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1 Let's look at it again. This is showing this is the raw
2 format, which you can go through. But if you look --
3 Ms. Penza went over this and I'm going to go over it again --
4 October 1st, 2015, 9:19 p.m. the defendant chats to Cami, I
5 think it would be good for you to own a fuck toy slave for me
6 that you could groom and use as a tool to pleasure me, dot,
7 dot, dot.

8 So this SOP tape is better evidence than that?
9 Better evidence than all the other texts with Camila about the
10 DOS concept at around the time it was formed? Better evidence
11 than the recordings you heard about the defendant talking
12 specifically about DOS and the branding and making the women
13 position them as if they are being sacrificed. And make them
14 ask to be branded so it appears that they are not coerced;
15 because why, because they are being coerced. And it's coming
16 out of his mouth, you heard on audio tape.

17 Better evidence than the DOS policies that you saw?
18 The formulas regarding collateral, what weighed what.
19 Ms. Penza went over this in detail, I'm not going to go over
20 all of this stuff.

21 The DOS book, you saw the DOS book. What is better
22 evidence about DOS than the DOS book.

23 Better evidence than, let's look at Lauren Salzman's
24 testimony. How is the SOP tape from 2012 better evidence than
25 what is reflected on page 1794 of Lauren Salzman's testimony,

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1 Ms. Penza went through this also.

2 Question: "What did you say?

3 Answer: "Is he fucking your slaves is what I said.

4 Question: "What did she say?

5 Answer: "She said just Nicole and Suzy. We're
6 going to start working with India and Jay. And I said to her,
7 when you say working, do you mean fucking? And she said yes."

8 Better evidence than that?

9 As an aside, while I'm talking about Lauren Salzman,
10 Mr. Agnifilio spent a lot of time about how Lauren Salzman
11 broke up with the defendant. This isn't high school, ladies
12 and gentlemen. This is serious business. And I said this
13 earlier, but what Lauren Salzman did in this courtroom wasn't
14 breaking up with the defendant. It was testifying under oath,
15 under a cooperation agreement after pleading guilty to two
16 racketeering offenses, and facing 20 years. That's what she
17 did.

18 So let's cut to the chase. It's 2015, Pam Cafritz
19 is dying. Pam is the member of the inner circle who for years
20 procured sex partners for the defendant, often beautiful
21 women, and she wasn't going to be around much longer. So what
22 did the defendant do? Maybe he was in a panic. He leveraged
23 his manipulation and his mind control to create an
24 organization that would serve up and continue to serve up a
25 steady stream of sex partners for him. But this time he

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1 didn't have Pam. I imagine Pam was a very nice person, no
2 reason not to believe that. He didn't have her. So what did
3 he have to use? Lies, coercion, collateral. Because Pam
4 wasn't going to be around anymore.

5 Remember when Mr. Agnifilio repeated that nursery
6 rhyme? I don't think I ever said it, 'cross my heart hope to
7 die stick a needle in my eye,' that's what little kids say.

8 But you heard Nicole's testimony. You heard Lauren
9 Salzman's testimony. You heard Jay's testimony. You heard
10 Sylvie's testimony. Collateral is what caused Nicole to be
11 strapped to a table with a stranger performing oral sex on
12 her. Needle in the eye, does that sound like a game to you?

13 Mr. Agnifilio did admit something about DOS, he
14 admitted the defendant was connected to it. He had to, the
15 tapes, the evidence, so overwhelming.

16 But then he said something interesting, he said the
17 defendant was not the CEO of DOS. I agree. He was the Grand
18 Master of DOS. He was the Master of all the slaves, the sex
19 slaves. He was the Supreme Being in this organization.

20 Listen to the tapes, is there any back and forth
21 between the defendant and the first line slaves? He's giving
22 orders instructions. It's all flowing from him. He's not
23 renting his brain out, that's absurd. This is his idea. He's
24 thinking up the branding. He's thinking up the details, the
25 positioning, where the hands go, what is said right before the

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1 branding. He's doing all of that.

2 Mr. Agnifilio also claims that DOS was created to
3 heal Camila. Do you remember that, that she slit her wrists I
4 guess. You know that's not true. Again, a
5 mischaracterization of the evidence.

6 You know that DOS was created before Camila joined
7 the first line. It wasn't created for Camila. You also know
8 in that tape that the first line, some of them pushed back
9 against Camila joining the first line. It wasn't a foregone
10 conclusion. This wasn't created to heal Camila.

11 Mr. Agnifilio also argued that DOS was not created
12 for sex. So let me get this right, if it's not created for
13 sex, then what was going to happen in the dungeon with the
14 cages and the tails and all of other stuff? Were they going
15 to knit sweaters in the dungeon? Is that what is going to
16 happen? Of course it was about sex.

17 Mr. Agnifilio also talked about relationships. You
18 may recall that. He said each relationship was unique. Well,
19 that's definitely not true. To the extent you want to call
20 the dealings with the sex slaves, with the DOS slaves, to be
21 relationships, they were relatively uniform, weren't they?
22 Many of the slaves in fact looked similar, many were branded,
23 forced to perform acts of care, assignments, weight-monitored,
24 sex with the defendant, send naked photos, send collateral.
25 It's pretty form relationship with those women, not unique in

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1 almost any respect.

2 It's interesting, the defendant points to -- they
3 all look the same -- Rosa Laura Junco. He pointed to Rosa
4 Laura and says she didn't have a relationship with the
5 defendant. Let's talk about Rosa Laura for just a moment.

6 She's the first line slave in DOS. And let's pull
7 out Government's Exhibit 1325. Think about this e-mail.
8 Mr. Agnifilio says she doesn't have a relationship with the
9 defendant. Right at the start -- this is an e-mail, remember
10 he's forwarding this e-mail to this encrypted e-mail account
11 right when everything is falling apart, trying to get rid of
12 stuff. And this is forwarding an e-mail originally sent by
13 Rosa Laura to him October 4, 2015. Hello M, hello Master. I
14 fear I may be affecting Laureisa and your possibility for
15 succession. The next line, I am being a crappy SL DOS, dot,
16 dot, dot slave. On the bottom, I'm a 100 percent clear that
17 you are what I want for my daughter, and obviously for myself.

18 So let's unpack this e-mail, we've done it before,
19 let's do it again. The defendant is on the hunt for a
20 successor. I suggest to you a successor is an underage
21 virgin. Laureisa, Rosa Laura's daughter, I don't know if
22 she's a virgin or not, but she's underage, she's a teenager.
23 Rosa Laura, who allegedly has no relationship with the
24 defendant, is serving up her teenage daughter to be the
25 defendant's successor, to have sex with him. And then she's

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1 saying that he is what she wants for her daughter; she wants
2 her daughter to have sex with him and obviously for myself.
3 And this is somebody who Mr. Agnifilio says has no
4 relationship with the defendant. Does that sound truthful?

5 Mr. Agnifilio also claims that Allison Mack's
6 circle, that they were doing something different from the
7 other circles. They were having sex, I guess the argument is
8 the others weren't in the other circles. You know that's not
9 true. Again not true. Why? Sylvie told you.

10 Who is Sylvie's master, not a quiz, you don't have
11 to answer it. I'll answer it for you, it was Monica Duran,
12 not Allison Mack. And Sylvie got the assignment to have oral
13 sex with the defendant. So it just wasn't Allison Mack.

14 Mr. Agnifilio also claimed the defendant was never
15 abusive, do you remember that? What courtroom has he been in
16 for the last six weeks? Never abusive.

17 Not only was the defendant physically abusive, you
18 heard from Daniela when he threw her on the ground. Do you
19 remember that? But he was sexually abusive and he was
20 psychologically abusive.

21 You heard Dr. Hughes, I'm not going to go through
22 her testimony, but you can ask for her testimony. You heard
23 her explain all of the types of isolation, surveillance, all
24 that stuff, used in abusive relationships. She called it the
25 coercive dynamic. Do you remember that? He must have read

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1 the text book on coercive dynamic. The defendant used almost
2 every single technique. The level of manipulation, the level
3 of coercion, the level of mind control, astounding. This
4 wasn't some prisoner of war camp in North Korea, this was in
5 Knoxwoods, in Clifton Park, that's where this happened.

6 Mr. Agnifilio described Nicole's leaving telling the
7 defendant, she was leaving, and again it was very nice, it was
8 a nice description. Am I ever going to see you again, sort of
9 one of those movie moments, right? He left out that one part,
10 again distracting, confusing, he left out a part. That was
11 the part when he asked for his money back, do you remember
12 that? He asked for his three grand back, the \$3,000 that
13 Nicole had access to. 10,000 she had access, she took 3,000.
14 He gave her that money so she could continue to be a sex
15 partner for him. Forgot that part.

16 He also said that Nicole didn't tell Allison Mack
17 about her sexual relationship with the defendant. Again, your
18 recollection controls, but that's simply untrue. What did
19 Nicole do right after the table, right after the table? She
20 went right to Allison Mack and told her about it. So she
21 wasn't keeping that a secret.

22 He also argued that Allison wanted to somehow help
23 Nicole. I'm not going to show it again, but you know what
24 that meant, you know working meant fucking.

25 Mr. Agnifilio also made an argument about Nicole

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1 that may have shocked you. First he said that after the table
2 incident, that Nicole's e-mails were less dark. Nicole were
3 grappling with weighty issues, her e-mails were less dark.
4 And he forgot to mention that in her testimony she told you
5 that during that time period she was weighing options. I
6 would suggest, you remember this clearly, because I think she
7 said one of the options was Witness Protection, she was
8 thinking about going into witness protection. She also said
9 at that time that another option was suicide. So she was
10 still thinking about suicide.

11 And then this is the shocking part. Mr. Agnifilio
12 suggested that the oral sex on the table, blind folded, while
13 she was collateralized with a total stranger when she was
14 being videotaped, somehow worked. Somehow worked. It was
15 strong medicine. Being strapped to a table while a stranger
16 performs oral sex on you is medicine, strong medicine? That's
17 no medicine. That's a sex crime. That's what that is.

18 And what was Mr. Agnifilio really arguing here?
19 What was he really saying? I would suggest, but you
20 ultimately have to determine that, he was arguing that Nicole
21 wanted it. That it was good for her. Sort of like when the
22 defendant was writing about raping good, remember, having
23 orgasms for the first time during rape that it was good for
24 her. That she wanted it.

25 Don't let him do that. Don't let him do that in

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1 this courtroom. She didn't want that.

2 Mr. Agnifilio also suggested that extortion wasn't
3 in their heart, do you remember that argument? You can read
4 the jury instructions all day and all night and you won't see
5 anything about extortion being in anyone's heart. You're
6 going to hear Judge Garaufis instruct you on the law, and his
7 instruction controls on every aspect of the law in this case,
8 but I would suggest to you that part of his instruction will
9 focus on instilling fear, instilling in the victim fear as the
10 sort of central aspect of the law of extortion.

11 The defendant's intentions are not at issue. The
12 victim's fear is. That fear was clearly justified.

13 On the issue of in a heart somewhere, what was
14 Allison Mack doing when she ordered Jay to seduce the
15 defendant and got push back. Then she immediately played the
16 sexual abuse, this will help you with your traumatic sexual
17 abuse. Then afterwards, I instruct you to enjoy it. Was she
18 speaking from the heart then?

19 Mr. Agnifilio also suggested that Nicole just left,
20 Jay just left. There were no repercussions whatsoever. I
21 would point out that the timing is off on Nicole. You can
22 check this in the record, but he seemed to indicate that she
23 was sending e-mails to Allison Mack on May 25 about the walk,
24 and he's off on that.

25 Nicole told you that table happened on May 31 and

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1 the metadata associated with the photograph of the table
2 confirms that it was May 31, that was just a day or so before
3 the co-summit where the DOS became public and everything
4 started falling apart. It's significant because May 31 is the
5 day after Jay takes the hike with Valerie, and so that's
6 unraveling on the West Coast, and Nicole is on the table. And
7 Nicole left a few weeks later I believe. This is when
8 everything is unraveling.

9 I should also note, Jay, you'll recall at that time,
10 was taking a hike. Prior to that she had made peace with the
11 fact, okay, my collateral is going to get released and then
12 the process started for her. And Audrey left in the same time
13 frame, June 2017. They left because it was all falling apart.

14 And Lauren Salzman explained this to you, go look at
15 her testimony about this. And during this entire process
16 where DOS is falling apart, people are leaving, ask yourself
17 one simple question, what didn't happen as part of that
18 process? You know what didn't happen, none of them got their
19 collateral back. You know that release of collateral was
20 discussed. Sylvie told you about warning Anna Gaby that her
21 collateral would be released if she did not behave. And
22 Lauren Salzman told you that the defendant contemplated the
23 release of Sarah's collateral. And you know that while each
24 and every one of you were sitting in these chairs in this
25 jury, that collateral was released in Mexico, Sarah's

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1 collateral.

2 Let's talk about commercial sex. Mr. Agnifilio
3 spent sometime on that. I'm going to spent a little time --
4 I'm close to the end, I'll tell you that.

5 And I expect, again judge Garaufis' instructions
6 control, but he'll explain in connection with commercial sex a
7 thing of value need not be financial. And that any thing of
8 value can go to any person involved in the venture. He'll
9 instruct that you any sex act is defined, any act for sexual
10 gratification that includes oral sex.

11 And things of value did go to people involved in
12 this sex trafficking in DOS. Let's talk about that. As
13 Ms. Penza explained, the e-mail explained that Allison Mack
14 and her getting paid for the source was contingent upon India
15 completing the assignment. You heard that Nicole got access
16 to \$10,000 and that she actually used \$3,000 while a DOS
17 slave. And what is the first thing the first thing the
18 defendant asked her the moment she said she was leaving, I
19 want my money back.

20 Access to the defendant was valuable in and of
21 itself. The first line slaves craved it. Access to the
22 defendant, particularly for the first line slaves, meant
23 increased financial benefits. You know that because of the
24 Allison Mack situation, that's an example. Mr. Vicente
25 actually told you that Nancy Salzman quantified the value of

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1 the defendant's time, that it was \$100,000 per hour. Jay, Jay
2 was told this was an opportunity to heal her sexual trauma.
3 And you may recall during her entire time in DOS she had the
4 expectation that she and the defendant would start a T-shirt
5 company that would generate profits.

6 And lastly, DOS was literally, literally a
7 pornography machine. Pumping out countless photos of women,
8 nude women, posed just like the defendant liked them fully
9 nude, pubic hair, open legs, vaginas exposed, shots of their
10 face, carefully posed so he could add them to his collection
11 of pornography, his pornography trophies. And that
12 pornography had value, enormous value, to the defendant.

13 Mr. Agnifilio said -- let's turn to the child
14 pornography. He didn't spend much time on the child
15 pornography itself. I would suggest that there is no doubt
16 that the evidence shows that there are two dates. Let's pull
17 up Government's Exhibit 550, just to remind everybody.

18 You have the folder then the two dates associated
19 with the sub-folder, November 2, 2005 and November 24, 2005.
20 If we can pull up Government's Exhibit 504B. Those two dates
21 correspond to the two folders on the hard drive. And then
22 504B is the exit data. I'm no expert, don't get me wrong, but
23 I heard Examiner Boothe, just like you did. Exit data is
24 extremely reliable. It's embedded in the jpeg, in the image
25 itself. And the exit data shows that the data was created on

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1 the camera, in this instance, this particular instance, the
2 150 jpeg on November 2, 2005 which consistent with the title
3 of the folder.

4 Then if you go, Alex, to page six under the
5 Exhibit 504B6, right above all those zeros. It's the camera
6 you saw that was recovered from the defendant's library. You
7 know the hard drive was in the library as well.

8 So really the defendant's argument with respect to
9 the child pornography is that all the Racketeering Act have to
10 be for a common purpose, but that's not all.

11 And Judge Garaufis will instruct you on the law. I
12 expect that he will instruct you as follows. That two
13 Racketeering Acts may be related. And the relationship may be
14 established by evidence that the defendant was enabled to
15 commit the Racketeering Act solely by virtue of his position
16 in the enterprise or involvement in or control over its
17 affairs. So the child pornography counts are related to the
18 enterprise because the defendant was able to commit them due
19 to his position in the enterprise.

20 I just told you what I expect Judge Garaufis to
21 instruct you on. Here members of the enterprise of the inner
22 circle were involved in facilitating the defendant's access to
23 Camila. Nancy Salzman hired her as a maid, keeping her away
24 from her siblings and closer to the defendant's reach. And
25 Pam Cafritz helped protect the defendant by making him lie to

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1 medical professionals about his sexual partners. The
2 defendant was able to exploit Camila and take photographs of
3 her, that are child pornography.

4 My colleague has advised me I may have misstated
5 something. I want to clarify the record, the assignment for
6 Nicole was in 2016 not 2017, she left in 2017. So I apologize
7 for that.

8 I would also note that, I think it's a fair
9 inference, that at the time Camila was photographed she was
10 the successor, she was the virgin successor, which was one of
11 the defendant's top priorities. She was a member of the
12 family, Daniela's family, that were brought here. Remember, a
13 family where three of the daughters were sexual partners with
14 the defendant, and the son worked in the community. So I
15 think that intercuts Mr. Agnifilio's argument that this was
16 not part of the enterprise.

17 We reached the final stage of this trial. You're
18 the triers of fact, not us lawyers, and not the judge. And
19 when you look at the facts, use your common sense. Think
20 about what is reasonable and what is not reasonable. Think
21 about what the evidence is and reject arguments that are not
22 supported by the evidence. We asked you to base your verdict
23 on the evidence and the law, not on any potential fear, favor,
24 sympathies, biases, and be fair to the defendant.

25 When you go back to that jury room later today, I'm

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1 going to offer you a suggestion. I'm going to ask you to
2 think about five places, five places as Ms. Penza described to
3 you, behind closed doors.

4 The first place is the basement of 7 Generals Way,
5 Allison's house. Jay's in this the basement. She gets a
6 phone call. It's Allison. Allison tells her how well she's
7 doing and how great she's doing, and tells her she has to
8 seduce the defendant. She says, you're celibate, what is the
9 big deal, what is one more? And Jay being Jay, she said her
10 spy sense kicked in. She knew this was wrong. She pushed
11 back. Allison went right for the gut, this is going to solve,
12 cure, your sexual abuse. And Jay backed off. And Allison
13 said, I give you permission. Permission, I may have said
14 instruct earlier, permission to enjoy this. And Jay hung up
15 the phone. And she said the walls were closing in on me.
16 Alone in the basement, having just received the assignment to
17 have sex with the defendant.

18 The second place is 2 Flintlock. Sylvie walking
19 into a bedroom with the defendant. Being asked to take her
20 clothes off. Being asked to lie down on a bed with a dirty
21 sheets. And the defendant having oral sex with her. And she
22 hasn't had sex with her husband. And she described to you
23 that horrible thought process when the defendant was having
24 oral sex that never seemed to end.

25 The third place is 12 Wilton. Daniela in the

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1 bedroom unraveling, early 20s, prime of her life, her mind
2 drifting away. The cleaning products, I'm going to commit
3 suicide. The loneliness, the despair. Do you remember those
4 drawings, the letters? The wilting times. The day, after
5 day, after day. Most of that time, or some of that time, the
6 window blacked out and just a mattress on the floor and note
7 pad.

8 The fourth place is 120 Victory, and Nicole. Being
9 led into, blind folded, double-blind folded, forced to
10 undress. Forced to lie on a cold table, legs strapped to the
11 table. And all of a sudden as she hears the defendant's
12 voice, then there is someone else in the room, and that
13 someone else started to give her oral sex. And then the
14 defendant starts questioning her about her sexual history and
15 all the while she's being videotaped.

16 The fifth place, ladies and gentlemen, is 8 Hale.
17 In 8 Hale was this, Government's Exhibit 503, the hard drive.
18 This is the place where the defendant stored Camila's
19 childhood, after he took it from her. After he took her
20 innocence. She wasn't adult-like when he was photographing
21 her with her legs spread. She was a child. She was a child.
22 He did that to that child.

23 So we're at the final stage. I would suggest to you
24 that we've reached the time when this man, the defendant, can
25 be held responsible for his years of lies, his years of

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1 extortion and abuse and coercion and manipulation, his sex
2 crimes. Hold him responsible for those crimes. Not because I
3 say he's guilty, not because my colleagues say he's guilty,
4 but because the evidence proves him guilty. We have proved
5 him guilty beyond a reasonable doubt.

6 Ladies and gentlemen, find the defendant guilty
7 because he is guilty. Thank you.

8 THE COURT: Members of the jury, this completes the
9 final argument. And we will begin the charge as soon as we've
10 had a five-minute break for the jury.

11 At 1:00 o'clock we'll have lunch for about half an
12 hour, then come back so we can complete all of the jury
13 instructions before the end of the day.

14 All rise for the jury.

15 (Jury exits the courtroom.)

16 (Brief recess.)

17 (Continued on next page.)
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JURY CHARGE

1 THE COURT: All right, let's bring the jury.

2 (Jury enters courtroom.)

3 THE COURT: Please be seated. All right.

4 Members of the jury, at this time it is my
5 obligation to charge you as to the law that you must apply to
6 the facts in this case as you find them. And the charge is
7 rather extensive, it's over 130 pages long and I am going to
8 read the first portion before lunch and then when you come
9 back from lunch I am going to ask my law clerks to take turns
10 reading portions of the charge and then I will read the last
11 portion and so we're going to do this as a team, so to speak,
12 and all you need to do is listen.

13 You'll each receive a copy of the charge back in the
14 jury room and you'll also receive a copy of the verdict sheet
15 and I will tell you more about that at the end.

16 Now that the evidence in this case has been
17 presented and the attorneys for the government and the
18 defendant have concluded their closing arguments, it is my
19 responsibility to instruct you as to the law that governs this
20 case. My instructions will be in three parts.

21 I will instruct you regarding the general rules that
22 define and govern the duties of a jury in a criminal case.

23 Second, I will instruct you as to the legal
24 elements of the crimes charged in the indictment, that is, the
25 specific elements that the government must prove beyond a

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1 reasonable doubt to warrant a finding of guilt; and.

2 Third, I will give you some general rules regarding
3 your deliberations.

4 The statutory language quoted in this final charge
5 is set forth in bold lettering.

6 First, I will talk about The Role of the Court.

7 Members of the jury, you have now heard all of the
8 evidence in the case as well as the final arguments of the
9 lawyers for the parties.

10 My duty at this point is to instruct you as to the
11 law. It is your duty to accept these instructions of law and
12 apply them to the facts as you determine them, just as it has
13 been my duty to preside over the trial and decide what
14 testimony and what evidence is relevant under the law for your
15 consideration.

16 On these legal matters you must take the law as I
17 give it to you. If any attorney has stated a legal principle
18 different from any that I state to you in my instructions, it
19 is my instructions that you must follow.

20 You should not single out any instruction as stating
21 the law on its own. You should instead consider my
22 instructions as a whole when you retire to deliberate in the
23 jury room.

24 You should not be concerned about the wisdom of any
25 rule that I state. Regardless of any opinion that you may

JURY CHARGE

1 have as to what the law may be, or ought to be, it would
2 violate your sworn duty to base a verdict upon any other view
3 of the law than that which I give you.

4 Now we'll talk about The Duties of the Jury.

5 To begin with, it is your duty to find the facts
6 from all the evidence in this case. You are the sole judges
7 of the facts. It is, therefore, for you and you alone to pass
8 upon the weight of the evidence, to resolve such conflicts as
9 may have appeared in the evidence, and to draw such inferences
10 as you deem to be reasonable and warranted from the evidence
11 or lack of evidence in this case.

12 With respect to any question concerning the facts,
13 it is your recollection of the evidence that controls.

14 You must apply the law in accordance with my
15 instructions to the facts as you find them. While the lawyers
16 may have commented on some of the legal rules, you must be
17 guided only by my instructions about the rules. You must
18 follow all of the rules as I explain them to you. You may not
19 follow some rules and ignore others. Even if you disagree
20 with the rules or don't understand the reasons for them, you
21 are bound to follow the legal rules that I describe.

22 All Parties are Equal Before the Court.

23 The fact that this prosecution is brought in the
24 name of the United States Government does not entitle the
25 United States to any greater consideration than the defendant.

JURY CHARGE

1 By the same token, it is entitled to no less consideration.
2 The parties, the United States Government and the defendant,
3 are equal before this court, and they are entitled to equal
4 consideration. Neither the government nor the defendant is
5 entitled to any sympathy or favor.

6 At times during the trial I found it necessary to
7 admonish the lawyers. You should not, however, let that
8 prejudice you toward a lawyer or that lawyer's client because
9 I have found it necessary to correct him or her. To the
10 contrary, each attorney in this trial has professionally and
11 competently served his or her client, and the court has great
12 respect for all the attorneys in this courtroom.

13 I will now discuss the Presumption of Innocence.

14 The indictment that was filed against the defendant
15 is the means by which the government gives him notice of the
16 charges against him and brings him before the court. It is
17 nothing more. The indictment is only an accusation. The
18 indictment is not evidence and you are to give it no weight in
19 arriving at your verdict.

20 The defendant pleaded not guilty in response to the
21 indictment. He is presumed to be innocent unless and until
22 guilt has been proved beyond a reasonable doubt. I therefore
23 instruct you that the defendant is to be presumed by you to be
24 innocent throughout your deliberations on each charged count
25 until such time, if ever, that you as a jury are satisfied

JURY CHARGE

1 that the government has proved him guilty beyond a reasonable
2 doubt on that count. The presumption of innocence alone,
3 unless overcome, is sufficient to acquit him. The defendant
4 is on trial for the crimes charged in the indictment and not
5 for anything else.

6 Evidence has been introduced as to the involvement
7 of other persons in the crimes charged. That those persons
8 are not also on trial here is not a matter of concern for you.
9 You should not speculate as to the reasons why those persons
10 are not on trial. Your only concern is whether the government
11 has or has not proved the guilt of the defendant beyond a
12 reasonable doubt as to each crime.

13 The Burden of Proof is on the Government.

14 Since the law presumes the defendant to be innocent,
15 the burden of proving his guilt beyond a reasonable doubt is
16 on the government throughout the trial. The defendant never
17 has the burden of proving his innocence or producing any
18 evidence at all. As a result, the law never imposes upon a
19 defendant in a criminal case the burden or duty of calling any
20 witnesses, including any expert witnesses, or producing any
21 evidence.

22 I will now discuss Proof Beyond a Reasonable Doubt.

23 For each crime with which the defendant is charged,
24 the government must prove each element of the crime beyond a
25 reasonable doubt. I will explain the elements of the crimes

JURY CHARGE

1 that the indictment charges later on but now I shall address
2 the phrase "reasonable doubt." Proof beyond a reasonable
3 doubt does not mean proof beyond all doubt. The government is
4 not required to prove the defendant's guilt to a mathematical
5 certainty. Rather, the test is one of reasonable doubt.

6 A reasonable doubt is a doubt based on reason and on
7 common sense. This means that if, after you have considered
8 all of the evidence in this case, you have a doubt that is
9 based upon your own experience, judgment and common sense, you
10 must find him not guilty of the crime in question.

11 A reasonable doubt, however, is not a doubt that
12 arises out of whim or speculation. Nor is a reasonable doubt
13 an excuse to avoid performing an unpleasant duty.

14 You should consider all of the proof presented at
15 trial, or any lack of proof, in determining whether you have a
16 reasonable doubt. In considering each count in the
17 indictment, unless the government proves beyond a reasonable
18 doubt that the defendant has committed each and every element
19 of the offense charged in the count, you must find the
20 defendant not guilty of that offense.

21 You should consider each count of the indictment
22 separately. It is thus possible for you to find the defendant
23 guilty on one count with which he is charged and not guilty on
24 another count. Conversely, you might find the defendant
25 guilty of each crime charged in the indictment, or you might

JURY CHARGE

1 find him not guilty of all the crimes charged in the
2 indictment.

3 On any count of the indictment, if, after a fair and
4 impartial consideration of all the evidence, you honestly
5 conclude that you have such a doubt as would cause a prudent
6 person to hesitate to act in matters of importance in his or
7 her own life, then you have a reasonable doubt. In that
8 event, it is your duty to acquit the defendant on that count.

9 If, on the other hand, after a fair and impartial
10 consideration of all the evidence, you do not have such a
11 doubt, then you have no reasonable doubt and, in that
12 circumstance, you should convict the defendant on that count.

13 The punishment is not the jury's concern. The
14 question of possible punishment of the defendant is of no
15 concern to the jury and should not, in any sense, enter into
16 or influence your deliberations. The duty of imposing a
17 sentence rests exclusively upon the court. Your function is
18 to weigh the evidence in the case and to determine whether or
19 not the defendant is guilty beyond a reasonable doubt solely
20 upon the basis of the evidence. Under your oath as jurors,
21 you cannot allow a consideration of the punishment that may be
22 imposed upon the defendant, if he is convicted, to influence
23 your verdict in any way, or, in any sense, enter into your
24 deliberations. The court notes that the death penalty is not
25 available as a punishment in this case. Furthermore, any

JURY CHARGE

1 references during closing arguments to the possible sentence
2 the defendant may face were arguments and nothing more. As I
3 have noted, the question of possible punishment is not your
4 concern and the duty of imposing sentence rests with the court
5 alone.

6 The Dates in the Indictment are Approximate.

7 The indictment charges "in or about" and "on or
8 about" and "between" certain dates. The government need not
9 establish with certainty the exact dates of an alleged
10 offense. It is sufficient if the evidence establishes beyond
11 a reasonable doubt that an offense was committed on a date
12 reasonably near the dates alleged.

13 Now I am going to discuss Evidence. What is
14 Evidence: I wish to instruct you now as to what is evidence
15 and how you should consider it. The evidence you will use to
16 decide what the facts are comes in three forms:

17 (1) sworn testimony of witnesses, both on direct and
18 cross-examination, from the witness stand;

19 (2) exhibits that have been received by the court in
20 evidence; and.

21 (3) stipulations.

22 If evidence was received for a limited purpose, you
23 must consider that evidence for that limited purpose only.

24 What is not evidence: When deciding the facts, you
25 must disregard the following things that are not evidence:

JURY CHARGE

1 1. Arguments or statements by lawyers are not
2 evidence.

3 2. Questions put to the witnesses are not evidence.

4 3. The indictment is not evidence.

5 The indictment is merely a statement of charges and
6 not itself evidence.

7 Transcripts of videos and audio recordings are not
8 evidence.

9 The government has been permitted to distribute and
10 display typed documents which contain the government's
11 interpretation of what appears on audio recordings that have
12 been received in evidence. Those documents were provided to
13 you as an aid or guide to assist you in listening to the
14 recordings. However, they are not in and of themselves
15 evidence. You alone should decide what appears on the
16 recording based on what you heard. If you think you heard
17 something differently than it appeared on the transcript, then
18 what you heard is controlling. Let me say again, you, the
19 jury, are the sole judges of the facts.

20 Objections to questions or to offered exhibits are
21 not evidence.

22 In this regard, attorneys for both the government
23 and the defendant have a duty to their client to object when
24 they believe evidence should not be received. You should not
25 be influenced by the objection or by the court's ruling on the

JURY CHARGE

1 objection. If the objection was sustained, ignore the
2 question and the answer, if an answer was given. If the
3 objection was overruled, treat the answer like any other
4 answer.

5 Anything you may have seen or heard outside the
6 courtroom is not evidence.

7 Your verdict must be based solely upon the evidence
8 or lack of evidence developed at trial. You are not to engage
9 in speculation or guesswork.

10 In reaching your decision as to whether the
11 government sustained its burden of proof, it would be improper
12 for you to consider any personal feelings you may have about
13 the defendant's race, national origin, ethnic background, sex,
14 age, or other personal characteristics. All persons are
15 entitled to the presumption of innocence and the government
16 has the same burden of proof in all criminal cases.

17 In addition, it would be equally improper for you to
18 allow any feelings you might have about the nature of the
19 crimes charged to interfere with your decision-making process.

20 It would also be improper for you to draw any
21 conclusions about the defendant's guilt or innocence from
22 anything you may or may not have observed about the spectators
23 inside or outside the courtroom. As I have said, your verdict
24 must be based solely upon the evidence presented at trial.

25 Under your oath as jurors, you are not to be swayed

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1 by sympathy for one side or the other. You are to be guided
2 solely by the evidence in this case and the crucial central
3 question you must ask yourselves when you sift through the
4 evidence is: has the government proved the guilt of the
5 defendant beyond a reasonable doubt.

6 It is for you alone to decide whether the government
7 has proved that the defendant is guilty of the crimes charged
8 solely on the basis of the evidence and subject to the law as
9 I charge you. It must be clear to you that if you let fear or
10 prejudice or bias or sympathy interfere with your thinking,
11 there is a risk that you will not arrive at a true and just
12 verdict.

13 If you have a reasonable doubt as to the defendant's
14 guilt, you must render a verdict of not guilty. But on the
15 other hand, if you should find that the government has met its
16 burden of proving the defendant's guilt beyond a reasonable
17 doubt, you must not hesitate to render a verdict of guilty
18 balls of sympathy or any other reason.

19 To repeat, your verdict must be based exclusively
20 upon the evidence or the lack of evidence in the case.

21 I will now discuss Direct and Circumstantial
22 Evidence.

23 I told you that evidence comes in various forms such
24 as the sworn testimony of witnesses, exhibits and
25 stipulations. There are, in addition, two different kinds of

JURY CHARGE

1 evidence, direct and circumstantial.

2 Direct evidence is the communication of a fact by a
3 witness who testifies to the knowledge of that fact having
4 been obtained through one of the five senses. So, for
5 example, a witness who testifies to knowledge of a fact
6 because he saw it, heard it, smelled it, tasted it or touched
7 it has provided direct evidence. As I explained to you in my
8 opening instruction, if you went outside and saw that it was
9 raining, you would have observed direct evidence of rain.

10 What remains is your responsibility to pass upon the
11 credibility of the witness who provides the direct evidence.

12 Circumstantial evidence is evidence that tends to
13 prove a fact in issue by proof of other facts from which the
14 fact in issue may be inferred. The word "infer" or the
15 expression "to draw an inference" means to find that a fact
16 exists from proof of another fact. For example, if a fact in
17 issue is whether it is raining at the moment, none of us can
18 testify directly to that fact sitting here as we are in this
19 courtroom without facing the window. Assume, however, that as
20 we are sitting here, a person walks into the room through that
21 back door wearing a raincoat that is dripping wet and carrying
22 an umbrella dripping water. We may infer that it is raining
23 outside. In other words, the fact of rain is an inference
24 that could be drawn from the wet raincoat and the dripping
25 umbrella. An inference is to be drawn only if it is logical

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1 and reasonable to do so. In deciding whether to draw an
2 inference, you must look at and consider all of the facts in
3 light of reason, common sense and experience. Whether a given
4 inference is or is not to be drawn is entirely a matter for
5 you, the jury, to decide. Please bear in mind, however, that
6 an inference is not to be drawn by guesswork, suspicion or
7 speculation.

8 I remind you again that you may not convict the
9 defendant unless you are satisfied of his guilt beyond a
10 reasonable doubt, whether based on direct evidence,
11 circumstantial evidence, or the logical inferences to be drawn
12 from such evidence. Circumstantial evidence does not
13 necessarily prove less than direct evidence, nor does it
14 necessarily prove more. You are to consider all the evidence
15 in the case, direct and circumstantial, in determining what
16 the facts are and in arriving at your verdict.

17 I will now discuss Deciding What to Believe.

18 In deciding what the facts are, you must decide
19 which testimony to believe, which testimony not to believe,
20 and how much weight to give to the testimony of each witness.
21 In making those decisions, there are a number of factors you
22 may take into account including the following:

23 Did the witness seem to be honest?

24 Did the witness have any particular reason not to
25 tell the truth?

JURY CHARGE

1 Did the witness have a personal interest in the
2 outcome of the case?

3 Did the witness seem to have a good memory?

4 Did the witness have the opportunity and ability to
5 observe accurately the things he or she testified about?

6 Did the witness appear to understand the questions
7 clearly and answer them directly?

8 Was what the witness said supported by other
9 evidence?

10 Did the witness' testimony differ from the testimony
11 of other witnesses?

12 People sometimes forget things. A contradiction may
13 be an innocent lapse of memory or it may be an intentional
14 falsehood. Consider, therefore, whether the contradiction has
15 to do with an important fact or only a small detail.

16 Different people observing an event may remember it
17 differently and therefore testify about it differently.

18 You may consider the factors I have just discussed
19 with you and other relevant factors in deciding how much
20 weight to give to testimony.

21 Finally, if you find that a witness has lied to you
22 about any matter, however insignificant, you may choose to
23 disregard that witness' testimony in part or in whole.

24 The fact that one party called more witnesses and
25 introduced more evidence than the other party does not mean

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1 that you should find the facts in favor of the side offering
2 the most witnesses. By the same token, you do not have to
3 accept the testimony of any witness, even if that witness has
4 not been contradicted or impeached, if you find the witness
5 not to be credible. You also have to decide which witnesses
6 to believe and which facts are true. To do this, you must
7 look at all the evidence, drawing upon your own common sense
8 and personal experience.

9 You have heard evidence that certain witnesses made
10 statements on earlier occasions that counsel argues are
11 inconsistent with the testimony of those witnesses at trial.
12 Evidence of a prior inconsistent statement is not to be
13 considered by you as affirmative evidence bearing on the
14 defendant's guilt. Evidence of the prior inconsistent
15 statement was placed before you for the more limited purpose
16 of helping you to decide whether to believe the trial
17 testimony of the witness who contradicted him or herself. If
18 you find that the witness made an earlier statement that
19 conflicts with his or her trial testimony, you may consider
20 that fact in deciding how much of his or her trial testimony,
21 if any, to believe.

22 In making this determination, you may consider
23 whether the prior statement was inconsistent with the witness'
24 statement at trial; whether the witness purposely made a false
25 statement or whether it was an innocent mistake; whether the

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1 inconsistency concerns an important fact, or whether it had to
2 do with a small detail; whether the witness had an explanation
3 for the inconsistency; and whether that explanation appealed
4 to your common sense.

5 It is exclusively your duty, based upon all of the
6 evidence and your own good judgment, to determine whether the
7 prior statement was inconsistent, and if so, how much, if any,
8 weight to be given to the inconsistent statement in
9 determining whether to believe all or part of the witness'
10 testimony.

11 In evaluating the credibility of a witness, you
12 should take into account any evidence that the witness who
13 testified may benefit in some way from the outcome of the
14 case. Such an interest in the outcome creates a motive to
15 testify falsely and may sway the witness to testify in a way
16 that advances his or her own interests. Therefore, if you
17 find that any witness whose testimony you are considering may
18 have an interest in the outcome of this trial, then you should
19 bear that factor in mind when evaluating the credibility of
20 his or her testimony and accept it with great care.

21 This is not to suggest that a witness who has an
22 interest in the outcome of the case will testify falsely. It
23 is for you to decide to what extent, if at all, a witness's
24 interest has affected his or her testimony.

25 I am now going to discuss Cooperating Witnesses

JURY CHARGE

1 Called by the Government.

2 You have heard witnesses who testified that they
3 were involved in planning and carrying out certain crimes with
4 the defendant. There has been a great deal said about these
5 so-called cooperating witnesses in the summations of counsel
6 and about whether or not you should believe them.

7 The government argues, as it is permitted to do,
8 that it must take the witnesses as it finds them. It argues
9 that only people who themselves take part in criminal activity
10 have the knowledge required to show criminal behavior by
11 others. For those very reasons, the law allows the use of
12 accomplice or co-conspirator testimony. Indeed, it is the law
13 in federal courts that the testimony of a single accomplice or
14 co-conspirator may be enough in itself for conviction, if the
15 jury finds that the testimony establishes guilt beyond a
16 reasonable doubt.

17 However, it is also the case that cooperator
18 testimony is of such a nature that it must be scrutinized with
19 great care and viewed with particular caution when you decide
20 how much of that testimony to believe. I have given you some
21 general considerations on credibility and I will not repeat
22 them all here. Nor will I repeat all of the arguments made on
23 both sides. However, let me say a few things that you may
24 want to consider during your deliberations on the subject of
25 accomplice and co-conspirator witnesses.

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1 You should ask yourselves whether these witnesses
2 would benefit more by lying or by telling the truth. Was
3 their testimony made up in a way because they believed or
4 hoped that they would somehow receive favorable treatment by
5 testifying falsely? Or did they believe that their interests
6 would be best served by testifying truthfully? If you believe
7 that a witness was motivated by hopes of personal gain, was
8 the motivation one that would cause him or her to lie or was
9 it one that would cause him or her to tell the truth? Did
10 this motivation color his or her testimony.

11 In sum, you should look at all of the evidence in
12 deciding what credence and what weight, if any, you will want
13 to give to cooperating witnesses.

14 I will now discuss Punishment of Accomplice and
15 Cooperating Witnesses.

16 You have heard testimony that a cooperating witness
17 in this case has been promised that if she provides
18 substantial assistance to the government and testified
19 truthfully, completely and fully, the government will present
20 to the sentencing court what is called a 5K1.1 letter. The
21 5K1.1 letter sets forth the cooperating witness's criminal
22 acts as well as the substantial assistance the witness has
23 provided. I instruct you that the 5K1.1 letter does not
24 guarantee the cooperating witness a lower sentence. This is
25 because the sentencing court may, but is not required to, take

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1 the 5K1.1 letter into account when imposing sentence on the
2 cooperating witness. The court has discretion, whether or not
3 a 5K1.1 letter is written, to impose any reasonable sentence
4 the Court deems appropriate up to the statutory maximum. The
5 determination whether to write a 5K1.1 letter rests with the
6 government. However, if the government does not write a 5K1.1
7 letter, the court would be obligated to impose at least any
8 minimum sentence required by law. The final determination as
9 to the sentence to be imposed rests with the Court, not the
10 government.

11 I will now talk about Guilty Pleas of Other
12 Individuals.

13 You have heard testimony from a witness who pled
14 guilty to charges arising out of the same facts as this case.
15 You are instructed that you are to draw no conclusions or
16 inferences of any kind about the guilt of the defendant on
17 trial from the fact that another individual pled guilty to
18 similar charges. Her decision to plead guilty was a personal
19 decision about her own guilt. That decision may not be used
20 by you in any way as evidence against the defendant on trial
21 here.

22 I will now discuss Expert Witnesses.

23 In this case I have permitted certain witnesses to
24 express their opinions about matters that are in issue. A
25 witness may be permitted to testify to an opinion on those

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1 matters about which he or she has special knowledge, skill,
2 experience and training. Such testimony is presented to you
3 on the theory that someone who is experienced and
4 knowledgeable in the field can assist you in understanding the
5 evidence or in reaching an independent decision on the facts.

6 In weighing this opinion testimony, you may consider
7 the witness's qualifications, his or her opinions, and his or
8 her reasons for testifying, as well as all the other
9 considerations that ordinarily apply when you are deciding
10 whether to believe a witness's testimony. You may give the
11 opinion testimony whatever weight, if any, you find it
12 deserves in light of all the evidence in this case. You
13 should not, however, accept opinion testimony merely because I
14 allowed the witness to testify concerning his or her opinion.
15 Nor should you substitute it for your own reason, judgment and
16 common sense. The determination of the facts in this case
17 rests solely with you, the jury.

18 I will now discuss Testimony of Government
19 Witnesses, Government Agents and Law Enforcement Witnesses.

20 During this trial you heard testimony from
21 government employees and law enforcement witnesses. That a
22 witness works in law enforcement or is a government employee
23 does not mean that his or her testimony is entitled to any
24 greater weight. By the same token, his or her testimony is
25 not entitled to any less consideration simply because he or

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1 she works in law enforcement or is a government employee. You
2 should consider the testimony of government agents and law
3 enforcement officers just as you would consider any other
4 evidence in the case and evaluate their credibility just as
5 you would that of any other witness. After reviewing all the
6 evidence, you'll decide whether to accept the testimony of law
7 enforcement and government employee witnesses and what weight,
8 if any, that testimony deserves.

9 I will now discuss The Defendant's Right Not to
10 Testify.

11 The defendant did not testify in this case. Under
12 other Constitution, he has no obligation to testify or to
13 present any other evidence because it is the government's
14 burden to prove his guilt beyond a reasonable doubt. You may
15 not attach any significance to the fact that the defendant did
16 not testify. Nor may you draw any adverse inference against
17 the defendant because he did not take the witness stand. In
18 your deliberations in the jury room you may not consider this
19 decision against the defendant in any way.

20 All Available Witnesses Need Not Be Produced.

21 The law does not require the government to produce
22 all available evidence or to call as witnesses all persons
23 involved in the case who may have been present at any relevant
24 time or place, or who may appear to have some knowledge of the
25 matters at issue in this trial. Nor does the law require any

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1 party to produce as exhibits all papers and objects mentioned
2 during the course of the trial. You are always entitled,
3 however, to consider any lack of evidence in determining
4 whether the government has met its burden of proof.

5 I will now discuss Uncalled Witnesses Equally
6 Available to Both Sides.

7 Both the government and the defense have the same
8 power to subpoena witnesses to testify on their behalf. If a
9 potential witness could have been called by the government or
10 by the defendant and neither called the witness, then you may
11 draw the conclusion that the testimony of the absent witness
12 might have been unfavorable to the government or to the
13 defendant or to both.

14 On the other hand, it is equally within your
15 province to draw no inference at all from the failure of
16 either side to call a witness. You are to remember that there
17 is no duty on either side to call a witness. An uncalled
18 witness's testimony might have been merely cumulative of
19 testimony already in evidence, or might have merely provided
20 additional testimony to facts already in evidence.

21 I remind you, however, that because the law presumes
22 the defendant to be innocent, the burden of proving his guilt
23 beyond a reasonable doubt is on the government throughout the
24 trial. The defendant never has the burden of proving his
25 innocence or of producing any evidence or calling any

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1 witnesses at all.

2 I will now discuss Evidence Obtained Pursuant to
3 Searches.

4 During the trial in this case you have heard
5 evidence seized during the execution of search warrants on two
6 residences which occurred on March 27th, 2018 in upstate New
7 York, as well as evidence recovered from searches of email
8 accounts and from other locations. I instruct you that these
9 searches were lawful and any evidence that was presented to
10 you from these searches was obtained legally and can be
11 considered by you. The fact of the search itself and the
12 manner in which the search was conducted should not enter into
13 your deliberations in any respect. You must therefore give
14 this evidence full consideration along with all the other
15 evidence in the case in determining whether the government has
16 proved that the defendant is guilty beyond a reasonable doubt.

17 I will now discuss Evidence of Other Crimes.

18 You have heard evidence that the defendant engaged
19 in conduct, including crimes, other than the crimes charged in
20 the indictment. The defendant is not on trial for committing
21 any acts not charged in the indictment. Consequently, you may
22 not consider evidence of those other acts as a substitute for
23 proof that the defendant committed the crimes charged. Nor
24 may you consider evidence of these other acts as proof that
25 the defendant has a criminal propensity, that is, that he

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1 likely committed the crimes charged in the indictment because
2 he was predisposed to criminal conduct.

3 As I have charged you during the trial, the evidence
4 of uncharged conduct by the defendant is admitted for a
5 limited purpose, and you may consider it only for those
6 limited purposes. The purposes for which such evidence is
7 admitted are as follows:

8 1. As evidence of the existence of the charged
9 enterprise and as evidence that the enterprise engaged in
10 racketeering activity.

11 2. As evidence of the defendant's position or role
12 within the enterprise.

13 . As evidence of the development of relationships
14 of trust between the defendant and others with whom they are
15 charged with carrying out the charged crimes.

16 . As evidence enabling you to understand the
17 complete story of the charged crimes.

18 . As evidence of conduct that is inextricably tied
19 with the charged crimes.

20 . As evidence corroborating the testimony of other
21 government witnesses.

22 Evidence of uncharged conduct by the defendant may
23 not be considered by you for any purpose other than the ones I
24 have just listed.

25 I will now discuss Discrepancies in Testimony.

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1 You have heard evidence of discrepancies in the
2 testimony of certain witnesses and counsel have argued that
3 such discrepancies are a reason for you to reject the
4 testimony of those witnesses.

5 Evidence of discrepancies may be a basis to
6 disbelieve a witness's testimony. On the other hand,
7 discrepancies in a witness's testimony or between his
8 testimony and that of others do not necessarily mean that the
9 witness's entire testimony should be discredited.

10 People sometimes forget things and even a truthful
11 witness may be nervous and contradict him or herself.
12 Further, two people witnessing an event may see or hear it
13 differently. Whether a discrepancy pertains to a fact of
14 importance or only to a trivial detail should be considered in
15 weighing its significance. A willful falsehood is always a
16 matter of importance and should be considered seriously.

17 It is for you to decide, based upon your total
18 impression of a witness, how to weigh the discrepancies in his
19 or her testimony and you should, as always, use common sense
20 and your own good judgment.

21 I am going to talk about Multiple Counts.

22 The indictment contains a total of seven counts or
23 charges against the defendant. Each count charges the
24 defendant with a different crime. You must consider each
25 count separately and return a separate verdict of guilty or

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1 not guilty for each count. Whether you find Mr. Raniere
2 guilty or not guilty as to one count should not affect your
3 verdict as to any of the other charged counts.

4 Stipulations.

5 The attorneys for the United States and the
6 defendant have entered into stipulations concerning facts
7 which are relevant to this case. When the attorneys on both
8 sides stipulate and agree to the existence of a fact, you
9 must, unless otherwise instructed, accept the stipulation as
10 evidence and regard that fact as proved.

11 I will now discuss the concept of Venue, V-E-N-U-E,
12 Venue.

13 Venue refers to the location of the charged crimes.
14 The indictment alleges that the crimes charged occurred in
15 whole or in part in this judicial district, the Eastern
16 District of New York. The district encompasses the boroughs
17 of Brooklyn, Queens and Staten Island, as well as Nassau and
18 Suffolk Counties on Long Island. To establish that venue for
19 a charged crime is appropriate in this district, the
20 government must prove that some act in furtherance of the
21 crime occurred here. That means that, with respect to the
22 crime charged, even if other acts were committed outside this
23 district or if the crime was completed elsewhere, venue is
24 established in the Eastern District of New York so long as
25 some act in furtherance of the crime took place in this

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1 district.

2 Let me further instruct you that while the
3 government's burden as to everything else in this case is
4 proof beyond a reasonable doubt, a standard that I have
5 already explained to you, venue need only be proved by the
6 lesser standard of preponderance of the evidence. To prove
7 something by a preponderance of the evidence means simply to
8 prove that the fact is more likely true than not true. I
9 emphasize that this lesser standard applies only where I
10 specifically mention it in this charge.

11 I am now going to talk about Publicity.

12 Your verdict must be based solely on the evidence
13 presented in this courtroom in accordance with my
14 instructions. You must completely disregard any reports that
15 you have read in the press, seen on television, heard on the
16 radio or seen online.

17 I will now discuss Particular Investigative
18 Techniques Not Required.

19 I instruct you that there is no legal requirement
20 that the government use any specific investigative techniques
21 to prove its case. Law enforcement techniques are not your
22 concern. Your concern is to determine whether or not, based
23 upon all of the evidence in the case, the government has
24 proved that the defendant is guilty beyond a reasonable doubt
25 as to each count charged against him.

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1 And, finally, Interviews of Witnesses.

2 There was testimony at trial that the attorneys for
3 the government interviewed witnesses when preparing for and
4 during the course of the trial. You should not draw any
5 unfavorable inference from that testimony. To the contrary,
6 the attorneys for both sides were obliged to prepare this case
7 as thoroughly as possible and might have been derelict in the
8 performance of their duties if they failed to interview
9 witnesses before the trial began and as necessary throughout
10 the course of the trial.

11 So, that completes Section One. We're going to go
12 on after lunch to Section Two which is to discuss the
13 indictment and to discuss the specific charges and the
14 elements of the crimes and for most of those sections I am
15 going to enlist the assistance of my law clerks.

16 We'll resume at 10 to 2, it's now 1:00. Have a good
17 lunch. All rise for the jury.

18 (Jury leaves courtroom.)

19 THE COURT: I think we had a slight duplication in
20 one of the items so I didn't reread it but hold on.

21 (Pause.)

22 MR. AGNIFILO: Section 25, Judge.

23 THE COURT: Yes, Other Persons Not on Trial.

24 MR. AGNIFILO: Right, I noticed you didn't read it.

25 THE COURT: Any objection to leaving that out?

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1 MR. AGNIFILO: I think that's fine.

2 MS. HAJJAR: Thank you, Your Honor, that's fine.

3 THE COURT: Okay. We'll resume at 1:45.

4 MR. AGNIFILO: Thank you, Judge.

5 THE COURT: And we're going to try to get through
6 everything this afternoon.

7 MR. AGNIFILO: Great.

8 THE COURT: Thank you. Oh, and think about
9 assembling the evidence which is I think in this case a big
10 project because you're going to have to roll that evidence --
11 I'm sorry, that evidence will have to be rolled into the jury
12 room except certain items such as the nude photographs, so
13 you'll tell me what you decide should be left out but
14 available to the jury if they request it.

15 MR. AGNIFILO: Very good.

16 THE COURT: Okay. Thank you.

17 MR. AGNIFILO: Thank you.

18 (Luncheon recess taken.)

19 (Continued on next page.)

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JURY CHARGE

1 AFTERNOON SESSION

2 (In open court.)

3 THE COURT: Everybody ready?

4 MR. AGNIFILO: Yes, Judge.

5 THE COURT: Bring in the jury.

6 (A brief pause in the proceedings was held.)

7 THE COURT: Let me introduce my third law clerk,
8 Eleanor Davis, who has been watching from above.

9 (A brief pause in the proceedings was held.)

10 COURTROOM DEPUTY: Jury entering.

11 (Jury enters courtroom.)

12 THE COURT: All right. Please be seated.

13 All right. Members of the jury, we're now going to
14 continue with the charge on the law.

15 This section is going to be read by Andrew Haddad,
16 one of my law clerks, who you previously met. And then we'll
17 move on to the next section, and hopefully, we'll get this all
18 done by 5:00 o'clock.

19 Okay, Andrew. Thank you.

20 MR. HADDAD: The defendant is formally charged in a
21 superseding indictment which I will simply call "the
22 indictment."

23 As the judge instructed you at the beginning of this
24 case, an indictment is a charge or accusation.

25 The indictment in this case contains seven separate

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1 counts and you will be called upon to render a separate
2 verdict on each. I remind you that whether you find the
3 defendant guilty or not guilty as to one offense should not
4 affect your verdict as to any other offense charged.

5 I will now instruct you as to the legal elements of
6 the crimes charged.

7 During these instructions, you will hear me use the
8 words "knowingly" and "intentionally" from time to time.

9 A person acts knowingly when he acts intentionally
10 and voluntarily, and not because of ignorance, mistake,
11 accident, or carelessness. Whether a defendant acted
12 knowingly may be proved by his conduct and by all of the facts
13 and circumstances surrounding a case. A person acts
14 intentionally when he acts deliberately and purposefully; that
15 is, a defendant's acts must have been a product of his
16 conscious objective decision rather than the product of a
17 mistake or accident.

18 These issues of knowledge and intent require you to
19 make a determination about the defendant's state of mind,
20 something that can rarely be proved directly. A wise and
21 careful consideration of all the circumstances of the case
22 may, however, permit you to make such a determination as to
23 the defendant's state of mind.

24 Indeed, in your everyday affairs, you frequently are
25 called upon to determine a person's state of mind from his or

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1 her words or actions in a given circumstance. You are asked
2 to do the same here.

3 I will now instruct you on the law of conspiracy.

4 You should understand that a conspiracy is an
5 offense separate from the commission of any offense that may
6 have been committed pursuant to the conspiracy. That is
7 because the formation of the conspiracy, a partnership for
8 criminal purposes, is in and of itself a crime. If a
9 conspiracy exists, even if it fails to achieve its purpose, it
10 is still punishable as a crime.

11 The essence of the charge of conspiracy is an
12 understanding or agreement between or among two or more
13 persons that they all together to accomplish a common
14 objective that they know was unlawful.

15 The two elements of the crime of conspiracy are as
16 follows:

17 First, that two or more persons entered the unlawful
18 agreement charged in the conspiracy count that you are
19 considering, and;

20 Second, that the defendant knowingly and
21 intentionally became a member of the conspiracy with the
22 intent to accomplish its unlawful purpose.

23 Let me discuss these two elements of a conspiracy
24 charge in a little more detail.

25 First, as to the existence of a charged conspiracy,

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1 the Government must prove that two or more persons entered
2 into the unlawful agreement that is charged in the count or
3 racketeering act that you are considering. One person cannot
4 commit the crime of conspiracy alone. Rather, the proof must
5 convince you that at least two people are joined together in a
6 common criminal scheme. The Government does not have to prove
7 an express or formal agreements when it seeks to prove a
8 conspiracy.

9 It need not prove the conspirators stated in words
10 or in writing what the scheme was, its object or purpose, or
11 the means by which it was to be accomplished.

12 It's sufficient, if the proof establishes, that the
13 conspirators tacitly came to a mutual understanding to
14 accomplish an unlawful act by means of a joint plan or a
15 common design. Put another way, to establish a conspiracy,
16 the Government is not required to prove that the conspirators
17 sat around a table and entered into a solemn contract orally
18 or in writing stating that they have formed a conspiracy to
19 violate the law setting forth details of the plans, the means
20 by which the unlawful project is to be carried out, or the
21 part to be played by each conspirator. It would be
22 extraordinary if there was such a formal document or specific
23 oral agreement.

24 Common sense would suggest that when people do, in
25 fact, undertake to enter into a conspiracy, much is left to an

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1 unexpressed understanding. A conspiracy by its very nature is
2 almost invariably secret in both origin and execution.
3 Therefore, it is sufficient for the Government to show that
4 the conspirators somehow came to a mutual understanding to
5 accomplish an unlawful act by means of a joint plan or common
6 scheme. Moreover, since a conspiracy is by its very nature
7 characterized by its secrecy, you may infer its existence from
8 the circumstances of the case and the conduct of the parties
9 involvement.

10 In a very real sense, then, in the context of
11 conspiracy cases, actions often speak louder than words. In
12 this regard, you may, in determining whether an agreement
13 existed here, consider the actions and statements of all of
14 those you find to be participants as proof that a common
15 design existed on the part of the persons charged to act
16 together to accomplish an unlawful purpose.

17 The second element requires that if you find the
18 conspiracy existed you must determine whether the defendant
19 was a member. That is, you must determine whether he
20 participated in the conspiracy willfully and with knowledge of
21 its unlawful purpose and in furtherance of its unlawful
22 purpose.

23 To act willfully means to act knowingly and
24 purposely with an intent to do something the law forbids.

25 A defendant's knowledge is a matter of inference

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1 from the facts proved.

2 To become a member of the conspiracy, a defendant
3 need not have known the identities of every member, nor did he
4 have bee to be apprised of their activities.

5 Moreover, a defendant need not have been fully
6 informed as to all of the details or the scope of the
7 conspiracy in order to justify an inference of knowledge on
8 his or her part. However, that defendant must agree on the
9 essential nature of the plan and be conscious of its general
10 nature and extent.

11 The extent or duration of a defendant's
12 participation does not necessarily bear on the issue of that
13 defendant's guilt. An equal role in the conspiracy is not
14 what the law requires.

15 If you find that the conspiracy existed, and if you
16 further find that the defendant participated in it knowingly
17 and willfully, the extent or degree of his participation is
18 not material. Moreover, it is not required that a person be a
19 member of the conspiracy from its very start. I want to
20 caution you, however, that the defendant's mere presence at
21 the scene of criminal activities, or at locations frequented
22 by criminals, the does not by himself make him a member of the
23 conspiracy.

24 Similarly, mere association with one or more members
25 of a conspiracy does not automatically make the defendant a

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1 member. A person may know or be friendly with a criminal
2 without being a criminal himself. Indeed, a person may be a
3 criminal without being a member of the charged conspiracy.
4 Mere similarity of conduct, or the fact that individuals may
5 have assembled together and discussed common aims and
6 interests, does not necessarily establish proof of the
7 existence of the conspiracy.

8 I further caution you that mere knowledge or
9 acquiescence without participation in the unlawful plan is not
10 sufficient. The fact that the acts of a defendant merely
11 happen to further the purposes or objectives of a conspiracy
12 without his knowledge does not make that defendant a member,
13 more is required under the law. What is necessary is that the
14 defendant must have participated with knowledge of at least
15 some of the purposes or objectives of the conspiracy and with
16 the intention of aiding in the accomplishment of those
17 unlawful ends.

18 Thus, while someone who is present during the
19 conspiracy is not necessarily a member, I further instruct you
20 that you may find that the defendant knowingly and willfully
21 became and was a member of the conspiracy if you find that his
22 presence was purposeful; that is, that the defendant's
23 presence on one or more occasions was intended to serve the
24 purposes of the conspiracy.

25 In sum, the defendant, in order to be a member of a

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1 conspiracy, must have intentionally engaged, advised, or
2 assisted in that conspiracy for the purpose of furthering the
3 illegal undertaking and must have done so with the
4 understanding of the unlawful character of the conspiracy. In
5 so doing, the defendant would have been a knowing and willful
6 participant in the unlawful agreement, that is to say, a
7 conspirator.

8 Before turning to the specific crimes charged, I
9 will also inform you of the principle of aiding and abetting
10 liability under federal law and New York State law.

11 Title 18, United States Code, Section 2 provides:
12 "Whoever commits an offense against the United States, or aids
13 or abets or counsels, commands, or induces or procures its
14 commission is punishable as a principal. And whoever
15 willfully causes an act to be done which, if directly
16 performed by him, would be an offense against the
17 United States is punishable as a principal."

18 Under The Aiding and Abetting Statute, it is not
19 necessary for the Government to show that the defendant
20 himself physically committed the crime with which he is
21 charged in order for the Government to sustain its burden of
22 proof. A person who aids or abets another to commit an
23 offense is just as guilty of that offense as if he committed
24 to himself.

25 Accordingly, you may find the defendant guilty of

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1 the offense charged if you find beyond a reasonable doubt that
2 the Government has proved that another person actually
3 committed the offense with which the defendant is charged and
4 that the defendant aided or abetted that person in the
5 commission of the offense.

6 Under The Aiding and Abetting Statute, the first
7 requirement is that you find that another person has committed
8 the crime charged. Obviously, no one can be convicted of
9 aiding or abetting the criminal acts of another if no crime is
10 committed by the other person in the first place. But if you
11 do find that a crime was committed, then you must consider
12 whether the defendant aided or abetted the commission of that
13 crime.

14 In order to aid or abet another to commit a crime,
15 it is necessary that a defendant knowingly associated himself
16 in some way with the crime, and that he participated in the
17 crime by doing some act to help make the crime succeed.

18 To establish that the defendant knowingly associated
19 himself with the crime you are considering, the Government
20 must establish that the defendant knew that the crime was
21 being committed. To establish that the defendant participated
22 in the commission of the crime, the Government must prove that
23 the defendant engaged in some affirmative conduct or overt act
24 for the specific purpose of bringing about that crime.

25 The mere presence of a defendant where a crime was

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1 being committed, even coupled with knowledge by that defendant
2 that a crime was being committed or merely associating with
3 others who are committing the crime is not sufficient to
4 establish aiding and abetting.

5 One who has no knowledge that a crime is being
6 committed, or is about to be committed, but inadvertently does
7 something that aids in the commission of that crime is not an
8 aider and abettor. An aider and abettor must know that the
9 crime is being committed and act in a way that is intending to
10 bring about the success of the criminal venture.

11 To determine whether the defendant aided or abetted
12 the commission of the crime with which he is charged, ask
13 yourself these questions:

14 Did he participate in the crime charged with
15 something he wished to bring about? Did he knowingly
16 associate himself with the criminal venture? Did he seek by
17 his actions to make the criminal venture succeed? If he did
18 these things, then the defendant is an aider and abettor and
19 therefore guilty of the offense.

20 If, on the other hand, your answer to any one of
21 these questions is no then the defendant is not an aider and
22 abettor and you must find him not guilty under that theory.

23 The relevant New York State statute on aiding and
24 abetting is Section 20 of the New York Penal Law which
25 provides in pertinent part as follows:

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1 "When one person engages in conduct which
2 constitutes an offense, another person is criminally liable or
3 such conduct when, acting with the mental culpability or
4 required for the commission thereof, he solicits, requests,
5 importunes, or intentionally aids such person to engage in
6 such conduct."

7 Under New York State law, as under federal law, a
8 defendant charged with aiding and abetting a crime may be
9 liable for the crime even if he, himself, does not commit the
10 crime charged.

11 Before the defendant may be held criminally liable
12 for the crime of another under New York State law, you must
13 find each of the following two elements.

14 First, that the defendant solicited, requested,
15 commanded, importuned or intentionally aided the other person
16 to engage in the criminal conduct.

17 And second, that the defendant did so with the state
18 of mind required for the commission of the offense.

19 I will now discuss co-conspirator statements and
20 liability.

21 The charges against the defendant allege that he
22 participated in a certain conspiracy. In that regard, the
23 judge admitted into evidence against the defendant the acts
24 and statements of the others because these acts and statements
25 were committed by persons who the Government alleges were also

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1 confederates or co-conspirators of the defendant on trial.

2 The reason for allowing this evidence to be received
3 against the defendant has to do with the nature of the crime
4 of conspiracy.

5 A conspiracy is often referred to as a "partnership
6 in crime." Thus, as in other types of partnerships, when
7 people enter into a conspiracy to accomplish an unlawful end,
8 each and every member becomes an agent for the other
9 conspirators in carrying out the conspiracy.

10 Accordingly, the reasonably foreseeable acts,
11 declarations, statements, and omissions of any member of the
12 conspiracy and in furtherance of the common purpose of the
13 conspiracy are deemed under the law to be the acts of all of
14 the members, and all of the members are responsibility for
15 such acts, declarations, statements, and omissions.

16 Thus, if you find that the defendant was a member of
17 a charged criminal conspiracy, then any acts done or
18 statements made in furtherance of the conspiracy by persons
19 also found by you to have been members of that conspiracy may
20 be considered against the defendant. This is so even if such
21 acts were done and statements whether made in the defendant's
22 absence and without his knowledge.

23 Before you may consider the statements or acts of a
24 co-conspirator in deciding the issue of the defendant's guilt,
25 you must first determine that the acts and statements were

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1 made during the existence and in furtherance of the unlawful
2 scheme. If the acts were done, or the statements made, by
3 someone whom you do not find to have been a member of the
4 conspiracy, or if they were done or said in furtherance of
5 that conspiracy, they may not be considered by you as evidence
6 against the defendant as to that conspiracy.

7 Now, I will instruct you on each of the counts in
8 the indictment. The order of the counts of the indictment is
9 not important.

10 Counts One and Two of the indictment charge the
11 defendant, Keith Raniere, with the crimes of racketeering
12 conspiracy and racketeering commonly referred to as violations
13 of the RICO statute.

14 I will first instruct you on the law regarding Count
15 Two which charges the defendant with the crime racketeering
16 and then instruct you on the law as it relates to Count One
17 which charges the defendant with the crime of racketeering
18 conspiracy.

19 Count Two reads as follows:

20 "In or about and between 2003 and March 2018, both
21 dates being approximate and exclusive, within the Eastern
22 District of New York and elsewhere, the defendant, Keith
23 Raniere, also known Vanguard, Grandmaster and Master, together
24 with others, being persons employed by and associated with the
25 enterprise, an enterprise that engaged in the activities of

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1 which affected interstate and foreign commerce, did knowingly
2 and intentionally conduct and participate directly and
3 indirectly in the conduct of the affairs of such enterprise
4 through a pattern of racketeering activity as that terms is
5 defined in Title 18, United States Code, Sections 1961(1) and
6 1961(5) consisting of the racketeering acts set forth below."

7 The relevant provision of the RICO statute provides
8 as follows:

9 "It shall be unlawful for any person employed by or
10 associated with any enterprise engaged in, or the activities
11 of which affect interstate or foreign commerce to conduct or
12 participate, directly or indirectly, in the conduct of such
13 enterprise's affairs through a pattern of racketeering
14 activity."

15 To prove this crime, the Government must prove five
16 elements beyond a reasonable doubt.

17 First: An enterprise as described in the indictment
18 existed on or about the time alleged in the indictment.

19 Second: The enterprise engaged in, or its
20 activities affected, interstate or foreign commerce.

21 Third: The defendant was employed by or was
22 associated with the enterprise.

23 Fourth: The defendant knowingly conducted or
24 participated, either directly or indirectly, in the conduct of
25 the affairs of the enterprise.

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1 And fifth: The defendant knowingly participated in
2 the conduct of the affairs of the enterprise through a pattern
3 of racketeering activity as described in the indictment; that
4 is, to the commission of at least two of the charged
5 racketeering acts which must have occurred within ten years of
6 each other or through causing or aiding and abetting the
7 commission of two such racketeering acts.

8 I will now explain each of these elements in greater
9 detail.

10 The first element the Government must prove beyond a
11 reasonable doubt is that an enterprise existed.

12 The indictment alleges the existence of the
13 following enterprise?

14 "The defendant, Keith Raniere, also known as
15 Vanguard, Grandmaster, and Master, was the founder of several
16 pyramid-structured organizations ("the pyramid organizations")
17 including but not limited to, one, NXIVM, Executive Success
18 Programs, Inc., Jness, LLC, Society of Protectors LLC, Ultima,
19 and other related entities collectively NXIVM.

20 And two, an organization referred to as DOS, the
21 Vow, and the Sorority. Collectively DOS.

22 In leading the pyramid organizations, Raniere relied
23 on certain individuals sometimes referred to as his Inner
24 Circle who were accorded special positions of trust and
25 privilege with Raniere and who carried out his directives.

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1 Members of Raniere's Inner Circle also held high
2 positions in one or more of the pyramid organizations
3 including serving as executives, directors, and officers of
4 NXIVM.

5 Members of Raniere's Inner Circle also, at times,
6 served as first line masters in DOS directly under Raniere,
7 meaning, that they comprise the second highest level with the
8 DOS pyramid, and that other than Raniere they wielded the most
9 power within DOS.

10 Raniere and his Inner Circle and others known and
11 unknown comprised an organized criminal enterprise. The
12 enterprise including its leadership, membership, and
13 associates constituted an enterprise as defined in Title 18,
14 United States Code, Section 1961(4), that is, a group of
15 individuals associated-in-fact that was engaged in and the
16 activities of which affected interstate and foreign commerce.

17 The enterprise constituted an ongoing organization
18 whose members functioned as a continuing unit for a common
19 purpose of achieving the objectives of the enterprise.

20 The principal purpose of the enterprise was to
21 promote the defendant, Keith Raniere, also known as Vanguard,
22 grand Master and Master, and to recruit new members into the
23 pyramid organizations by promoting Raniere and recruiting
24 others into the pyramid organizations, the members of the
25 enterprise expected to receive financial opportunities and

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1 personal benefits including increased power and status within
2 the enterprise. The enterprise operated within the Eastern
3 District of New York, the Northern District of New York and
4 elsewhere including overseas.

5 Among the means and methods by which the defendant
6 and his associates participated in the conduct of the
7 enterprise were the following:

8 Promoting, enhancing, and protecting the enterprise
9 by committing, attempting, and conspiring to commit crimes
10 including, but not limited to, visa fraud, identity theft,
11 extortion, forced labor, sex trafficking, wire fraud, tax
12 evasion and obstruction of justice.

13 Demanding absolute commitment to Raniere including
14 by exalting Raniere's teachings and ideology and not
15 tolerating dissent.

16 Inducing shame and guilt in order to be influence
17 and control members and associates of the enterprise.

18 Obtaining sensitive information about members and
19 associates of the enterprise in order to maintain control over
20 them.

21 Recruiting and grooming sexual partners or Raniere
22 in obtaining nude photographs of women for Raniere.

23 Isolating associates and others from friends and
24 family and making them dependent on the enterprise for their
25 financial well being and legal status in the United States.

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1 Protecting and attempting to protect Raniere and the
2 enterprise by, among other things, gaining political influence
3 in evading regulatory agencies, using harassment and coercion
4 and abusive litigation to intimidate and attack perceived and
5 critics of Raniere, and encouraging associates and others to
6 take expensive NXIVM courses and incur debt to do so is a
7 means of exerting control over them and to obtain financial
8 benefits for members of the enterprise."

9 The term "enterprise" as used in these instructions
10 may include any group of people associated-in-fact even though
11 this association is not recognized as a legal entity. Thus,
12 an enterprise need be not a formal business entity such as a
13 corporation but meeting merely as informal association of
14 individuals.

15 The term "enterprise" includes legitimate and
16 illegitimate enterprises. An enterprise can merely be a
17 vehicle used by a defendant to commit crimes.

18 The enterprise does not have to have a particular
19 name, or for that matter, any name at all. Nor must it be
20 registered or licensed as an enterprise or be a commonly
21 recognized legal entity such as a corporation, a partnership,
22 a business or the like.

23 A group or association of people can be an
24 enterprise if these individuals have associated together for a
25 common purpose of engaging in a course of conduct. Mere

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1 similarity of conduct or the fact that individuals may have
2 assembled together and discussed common aims and interests
3 does not necessarily establish proof of the existence of an
4 enterprise though you may consider such factors.

5 Such an association of persons may be established by
6 evidence showing an ongoing organization or more informal, and
7 by evidence that the people making up the association
8 functioned as a continuing unit.

9 The Government must prove an association-in-fact
10 enterprise existed by evidence of an ongoing organization,
11 formal or informal, and by evidence that the various
12 associates functioned as a continuing unit.

13 The enterprise must have the three following
14 structural features: A purpose, relationships among those
15 associated with the enterprise, and longevity sufficient to
16 permit these associates to pursue the enterprise's purpose.

17 It is not necessary that the enterprise have any
18 particular or formal structure, but it must have sufficient
19 organization that its members functioned and operated in a
20 coordinated manner in order to carry out the alleged common
21 purpose or purposes of the enterprise.

22 Such a group need not have a hierarchal structure or
23 chain of command. Decisions may be made on an ad hoc basis and
24 by any or number of methods by majority vote, consensus, show
25 of strength, et cetera.

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1 Members of the group need not have fixed roles.
2 Different members may perform different roles at different
3 times. The group need not have a name, regular meetings,
4 dues, established rules and regulations, disciplinary
5 procedures, or initiation procedures.

6 While the group must function as a continuing unit
7 and remain in existence long enough to pursue a course of
8 conduct, you may nonetheless find that the enterprise element
9 is satisfied by finding the existence of the group whose
10 associates engage in spurts of activity punctuated by periods
11 of inactivity.

12 Thus, an enterprise need not have role
13 differentiation, a modus operandi, a chain of command,
14 sophistication, organization, diversity and complexity of
15 crimes, uncharged or additional crimes aside from the alleged
16 racketeering activity, or an enterprise name.

17 Moreover, an enterprise is not required to be
18 businesslike in its form or function and it may but need not
19 have an economic or profit seeking motive. Indeed, RICO is
20 not limited to groups or crimes are sophisticated, diverse,
21 complex, or unique.

22 Such an association of individuals may retain status
23 as an enterprise even though the membership of the association
24 changes over time by adding or losing individuals during the
25 course of its existence. The exist of the enterprise

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1 continues even if there is a gap or interruption of the
2 enterprise's racketeering activity.

3 Although, whether an enterprise existed is a
4 distinct element that must be proved by the Government, common
5 sense dictates that the existence of an enterprise is
6 oftentimes more readily proved by what it does rather than by
7 an abstract analysis of its structure.

8 Thus, the evidence used to prove the pattern of
9 racketeering in the enterprise may coalesce. Therefore, you
10 may consider proof of the racketeering acts to determine
11 whether the evidence establishes the existence of an
12 enterprise, and further, you may infer the existence of an
13 enterprise with evidence of a pattern of racketeering
14 activity.

15 The Government is not required to prove each and
16 every allegation about the enterprise or the manner in which
17 the enterprise operated. The enterprise proved, however, must
18 be essentially the one alleged in the indictment.

19 The second element that the Government must prove
20 beyond a reasonable doubt is that the enterprise was engaged
21 in, or had an affect on, interstate or foreign commerce even
22 if it was only a minimal affect.

23 Interstate commerce means trade or conducting
24 business or travel between one state and another state or the
25 District of Columbia. Foreign commerce means such trade,

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1 business, or travel between the United States and another
2 country.

3 Therefore, interstate and foreign commerce may
4 include the movement of money, goods, services, or persons
5 from one state to another state or the District of Columbia,
6 or between the United States and another country.

7 This may include, among other matters, a purchase or
8 sale of goods or supplies from outside the United States. The
9 use of interstate or international mail or wire facilities or
10 the causing of any of those things.

11 The Government need not prove that the acts of the
12 defendant affected interstate or foreign commerce, or that the
13 defendant knew that he was affecting interstate state or
14 foreign commerce.

15 Regarding an alternative method of satisfying this
16 element to establish the requisite of affecting interstate or
17 foreign commerce, the Government is not required to prove a
18 significant or a substantial affect on interstate or foreign
19 commerce.

20 This element simply ensures federal jurisdiction
21 over the conduct has satisfied if even a minimal affect on
22 interstate or foreign commerce. The affect need not be
23 direct. Any affect, even if it is postponed, indirect or
24 slight, is sufficient to satisfy the interstate or foreign
25 commerce element. It does not matter whether the affect is

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1 harmful or beneficial to interstate or foreign commerce.

2 Moreover, it's not necessary for the Government to
3 proof that the defendant knew that the enterprise would affect
4 interstate or foreign commerce that the defendant intended to
5 affect interstate or foreign commerce, or that the defendant
6 engaged in, or that his activities affected interstate or
7 foreign commerce.

8 I instruct you that it makes no difference whether
9 the type of interstate or foreign commerce affected is legal
10 or illegal. It is not necessary for the Government to prove
11 that the individual racketeering acts themselves affected
12 interstate or foreign commerce.

13 Rather, it is the enterprise and its activities
14 considered in their entirety that must be shown to have that
15 affect. On the other hand, this affect on interstate or
16 foreign commerce may be established through the affect caused
17 by the individual racketeering acts.

18 The third element that the Government must prove
19 beyond a reasonable doubt is that the defendant was associated
20 with or employed by the enterprise at some time during the
21 period charged in the indictment.

22 Associated with should be given its plain meaning.

23 Associate means to join often in a loose
24 relationship as a partner, fellow worker, colleague, friend,
25 companion, or ally to join or connect with one another.

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1 Therefore, a person is associated with an enterprise
2 when, for example, he joins with other members of the
3 enterprise and he knowingly aids or furthers the activities of
4 the enterprise, or he conducts business with or through the
5 enterprise with or through the enterprise.

6 The defendant need not have been a member of or
7 associated with the enterprise for the entire period of its
8 existence, but the defendant must have been associated with
9 the enterprise at the time he allegedly committed the crimes
10 charged. That is, the Government must prove that the
11 defendant was connected to the enterprise in some meaningful,
12 way, and that he knew of the existence of the enterprise and
13 of the general nature of its activities.

14 A person cannot be associated or employed by an
15 enterprise if he does not know of the enterprise's existence
16 or the nature of its activity.

17 The fourth element that the Government must prove is
18 that the defendant knowingly conducted or participated either
19 directly or indirectly in the conduct of the affairs of the
20 enterprise.

21 This means that the defendant must have played some
22 part in the operation or management in the enterprise, and
23 that the defendant intentionally performed acts, functions, or
24 duties that are necessary to, or helpful, in the operation of
25 the enterprise.

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1 Thus, if the defendant participated in the operation
2 or management of the enterprise itself, or he had some part in
3 directing the enterprise's affairs, that would satisfy this
4 element. In other words, all who participate in the conduct
5 of the enterprise whether they are generals or foot soldiers
6 are responsible for the affairs of the enterprise.

7 The fifth element the Government must prove beyond a
8 reasonable doubt is that the defendant engaged in a pattern of
9 racketeering activity.

10 The term "racketeering activity" is defined to mean
11 the commission of certain crimes. The pattern of racketeering
12 activity generally means the following;

13 First, the defendant intentionally committed or
14 caused or aided and abetting the commission of two or more of
15 the racketeering acts alleged in the indictment. At least two
16 of which must have occurred within ten years of each other.

17 Your verdict must be unanimous as to which specific
18 racketeering acts you find that the defendant committed,
19 caused, or aided and abetted.

20 Shortly, I will instruct you on the elements
21 regarding each of the alleged racketeering acts.

22 Second, the racketeering acts must have a nexus to
23 the enterprise and the racketeering acts must be related.

24 A racketeering act has nexus to the enterprise if it
25 has a meaningful connection to the enterprise to be related,

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1 the racketeering acts must have the same or similar purposes,
2 results, participants, victim, or methods of commission, or be
3 related by distinguishing characteristics and not be merely
4 isolated events.

5 Two racketeering acts may be related even though
6 they are dissimilar or not directly related to each other
7 provided that the racketeering acts are related to the same
8 enterprise.

9 For example, for both nexus and relatedness
10 purposes, the requisite relationship between the RICO
11 enterprise and the predicate racketeering act may be
12 established by evidence that the defendant was enabled to
13 commit the racketeering act solely by virtue of his position
14 in the enterprise or involvement in or control over its
15 affairs, or by evidence that the defendant's position in the
16 enterprise facilitated his commission of the racketeering act;
17 or by evidence that the racketeering act benefited the
18 enterprise, or by evidence that the racketeering act was
19 authorized by the enterprise or by evidence the racketeering
20 act promoted or furthered the purposes of the enterprise.

21 Third, the racketeering acts themselves either
22 extended over a substantial period of time or posed a threat
23 of continued criminal activity.

24 The Government need not prove such a threat of
25 continuity by any mathematical formula or by any particular

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1 method of proof, but rather, may prove it in a variety of
2 ways.

3 For example, the threat of continued unlawful
4 activity may be established when the evidences shows that the
5 racketeering acts are part of a long-term association that
6 exists for criminal purposes, or when the racketeering acts
7 are shown to be a regular way of conducting the affairs of the
8 enterprise.

9 Moreover, in determining whether the Government has
10 proved the threat of continued unlawful activity, you are not
11 limited to consideration of the specific racketeering acts
12 charged against the defendant.

13 Rather, in addition to considering such acts, you
14 also may consider the nature of the enterprise and other
15 unlawful activities of the enterprise and its members viewed
16 in their entirety including both charged and uncharged
17 unlawful activities.

18 (Continued on the next page.)
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25

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1 MR. HADDAD: (Continued.) I will now explain the
2 law governing the eleven racketeering acts that the government
3 has alleged. As a reminder, you must render separate verdicts
4 of proven or not proven with regard to each of these alleged
5 racketeering acts on the verdict sheet under Count Two.

6 I will now discuss Racketeering Act One.

7 Racketeering Act One alleges that the defendant
8 committed two separate crimes: conspiracy to commit identity
9 theft and conspiracy to unlawfully possess an identification
10 document. Thus, Racketeering Act One has two parts, and you
11 will render separate verdicts on each part. If you find that
12 the defendant committed either or both of these two crimes,
13 you must find that the government has proved Racketeering
14 Act One.

15 Racketeering Act 1A, which is Conspiracy to Commit
16 Identity Theft of Ashana Chenoa.

17 The first part of Racketeering Act One, which is
18 referred to on the verdict sheet as Racketeering Act 1A,
19 alleges that the defendant committed conspiracy to commit
20 identity theft as to Ashana Chenoa. With respect to
21 Racketeering Act 1A, the indictment reads as follows:

22 "In or about 2004, within the Northern District of
23 New York and elsewhere, the defendant Keith Raniere, together
24 with others, did knowingly and intentionally conspire to
25 transfer, possess and use, without lawful authority and in and

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1 affecting interstate and foreign commerce, one or more means
2 of identification of another person, to wit: Ashana Chenoa,
3 with the intent to commit, and to aid and abet, and in
4 connection with, unlawful activity that constituted one or
5 more violations of federal law, to wit: bringing in,
6 transporting and harboring an alien, in violation of Title 8,
7 United States Code, Section 1324(a)(1)(A), contrary to
8 Title 18, United States Code, Section 1028(a)(7), all in
9 violation of Title 18, United States Code, Section 1028(f)."

10 Racketeering Act 1A alleges that the defendant
11 conspired to violate Title 18, United States Code,
12 Section 1028(a)(7). There are two relevant statutory
13 provisions in Racketeering Act 1A. First, Title 18, United
14 States Code, Section 1028(a)(7) makes it a federal crime for
15 anyone knowingly to transfer, possess and use, without lawful
16 authority, a means of identification of another person in
17 order to commit, or to aid and abet, or in connection with,
18 any unlawful activity that violates federal or state law.
19 Second, Title 18, United States Code, Section 1028(f) makes it
20 a federal crime to conspire to commit the crime I just
21 described.

22 The defendant is charged with conspiring under
23 Section 1028(f) to commit the crime defined in
24 Section 1028(a)(7). I have already instructed you on the
25 general definition of conspiracy, which is an agreement among

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1 two or more people to commit a crime. I remind you that the
2 crime of conspiracy to violate a federal law is a separate
3 offense from the underlying crime. It is separate and
4 distinct from an actual violation of identity theft, which is
5 the object of the conspiracy and what we call the substantive
6 crime. In order to find the defendant guilty of conspiracy to
7 commit identity theft, you must find that two or more persons
8 agreed to commit the crime of identity theft, and that the
9 defendant knowingly and intentionally became a member of the
10 conspiracy.

11 The elements of the crime of identity theft are as
12 follows:

13 First, that the defendant or a co-conspirator
14 knowingly transferred or possessed or used a means of
15 identification of another person;.

16 Second, that the defendant or a co-conspirator knew
17 that the means of identification belonged to another person;.

18 Third, that the defendant or a co-conspirator acted
19 without lawful authority;.

20 Fourth, that the defendant or a co-conspirator acted
21 with the intent to commit, or to aid and abet, or in
22 connection with, an unlawful activity that violates federal
23 law;.

24 Fifth, that the transfer or possession or use of the
25 means of identification occurred in or affected interstate or

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1 foreign commerce, or the means of identification was
2 transported in the mail in the course of the transfer or
3 possession or use.

4 As to the first element, the government must prove
5 beyond a reasonable doubt that the item described in the
6 indictment is a means of identification of another person.
7 The term "means of identification" means any name or number
8 that may be used, alone or in conjunction with any other
9 information, to identify a specific individual, including a
10 name, social security number, date of birth, official state or
11 government issued driver's license or identification number,
12 alien registration number, government passport number, or
13 employer or taxpayer identification number. The means of
14 identification may belong to a living or deceased person.

15 I further instruct you that to use a means of
16 identification is to present, display, certify, or otherwise
17 employ the document in any manner so that it would be accepted
18 as identification. To transfer a means of identification
19 means simply to turn over possession or control of the means
20 of identification. To possess a means of identification means
21 to have it within a person's control. This does not mean that
22 the person must have actual possession of it. As long as the
23 means of identification was within the person's control, he
24 possessed it. If you find that the person either had actual
25 possession of the means of identification or that he had the

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1 power and intention to exercise control over it, even though
2 it was not in his physical possession, you may find that the
3 government has proved possession.

4 Possession may be sole or joint. If one person
5 alone possesses something, that is sole possession. However,
6 it is possible that more than one person may have the power
7 and intention to exercise control over a means of
8 identification. That is called joint possession. If you find
9 that a person had such power and intention, then he possessed
10 the means of identification even if he possessed it jointly
11 with another person.

12 As to the third element, the government must prove
13 that the defendant or a co-conspirator was not authorized to
14 use the means of identification. The government must also
15 prove that the defendant or a co-conspirator used or
16 transferred or possessed the means of identification
17 knowingly, that is, he or she did so voluntarily and
18 intentionally and not because of accident, mistake or some
19 other innocent reason.

20 The fourth element the government must prove beyond
21 a reasonable doubt is that the defendant or a co-conspirator
22 used or transferred or possessed the means of identification
23 with the intent to commit, or to aid and abet, or in
24 connection with, an unlawful activity that violates federal
25 law. In this case the government has alleged the defendant

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1 acted with the intent to commit the bringing in, transporting
2 and harboring of an alien, that is, a person who is not a
3 citizen of the United States, in violation of Title 8, United
4 States Code, Section 1324(a)(1)(A). In relevant part,
5 Section 1324(a)(1)(A) prohibits two categories of criminal
6 acts: first, it prohibits a person from transporting or
7 moving an alien within the United States, or attempting to do
8 so, knowing or in reckless disregard of the fact that the
9 alien is in the United States in violation of law, and in
10 furtherance of the alien's violation of the immigration laws;
11 and second, it prohibits a person from concealing, harboring,
12 or shielding from detection an alien within the United States,
13 or attempting to do so, knowing or in reckless disregard of
14 the fact that the person is in the United States in violation
15 of law, and to facilitate the alien's ability to remain in the
16 United States, that is, to make the alien's remaining in the
17 United States illegally substantially easier or less
18 difficult.

19 To establish this element, the government does not
20 need to prove that the defendant actually committed any of the
21 crimes prohibited by 1324(a)(1)(A). This element is satisfied
22 if you find that the government proved beyond a reasonable
23 doubt that the defendant used or transferred or possessed the
24 means of identification, or conspired to do so, with the
25 intent to commit, aid and abet, or in connection with any of

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1 these offenses.

2 Finally, as to the fifth element, I instruct you
3 that interstate or foreign commerce simply means the movement
4 of goods, services, money and individuals between any two or
5 more states or a state and a foreign country. To satisfy this
6 element, the government must prove that the defendant's
7 conduct affected interstate or foreign commerce in any way, no
8 matter how minimal.

9 I will now discuss Racketeering Act 1B which is
10 Conspiracy to Unlawfully Possess an Identification Document.

11 The second part of Racketeering Act One, which is
12 referred to on the verdict sheet as Racketeering Act 1B,
13 charges the defendant with conspiracy to unlawfully possess an
14 identification document. With respect to Racketeering Act 1B
15 the indictment reads as follows:

16 "In or about December 2004, within the Northern
17 District of New York and elsewhere, the defendant Keith
18 Raniere, together with others, did knowingly and intentionally
19 conspire to possess a false identification document, to wit: a
20 sheriff's identification card with the last name and date of
21 birth of Ashana Chenoa, with the intent that such document be
22 used to defraud the United States, contrary to Title 18,
23 United States Code, Section 1028(a)(4), in violation of
24 Title 18, United States Code, Section 1028(f)."

25 Racketeering Act 1B alleges that the defendant

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1 conspired to violate Title 8, United States Code,
2 Section 1028(a)(4) -- I'm sorry, that's Title 18, United
3 States Code, Section 1028(a)(4).

4 THE COURT: Okay.

5 MR. HADDAD: As with Racketeering Act 1A, there are
6 two relevant statutory provisions in Racketeering Act 1B.
7 First, Title 18, United States Code, Section 1028(a)(4) makes
8 it a federal crime for anyone knowingly to possess an
9 identification document, authentication feature, or false
10 identification document with the intent that it be used to
11 defraud the United States. Second, Title 18, United States
12 Code, Section 1028(f) makes it a federal crime to conspire to
13 commit the crime I just described.

14 The defendant is charged with conspiring under
15 Section 1028(f) to commit the crime defined in Section
16 1028(a)(4). I have already instructed you on the general
17 definition of conspiracy. You should apply that definition
18 here. I will now define the elements of unlawful possession
19 of an identification document.

20 The elements of the crime of unlawful possession of
21 an identification document are as follows:

22 First, the document described in the indictment,
23 i.e. a sheriff's identification card with the last name and
24 date of birth of Ashana Chenoa is a false identification
25 document;.

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1 Second, the defendant or a co-conspirator possessed
2 that document;.

3 Third, the defendant or a co-conspirator possessed
4 that document knowingly and with the intent that such document
5 would be used to defraud the United States.

6 With respect to the first element. I instruct you
7 that false identification document means a document of a type
8 intended or commonly accepted for the purposes of
9 identification of individuals that was not issued by or under
10 the authority of a governmental entity or was issued under the
11 authority of a governmental entity but was subsequently
12 altered for the powers of deceit, and appears to be issued by
13 or under the authority of the United States Government or a
14 state or local government.

15 With respect to the second element, I have already
16 instructed you on the meaning of the word "possess." You
17 should apply those instructions here.

18 Finally, with respect to the third element, I have
19 instructed you on the definition of the word "knowingly" and
20 you should apply those instructions here. The phrase "intent
21 that such document would be used to defraud the United States"
22 means the intent to mislead or deceive an officer or employee
23 of the United States Government in carrying out that officer
24 or employee's official duties. However, it is not necessary
25 that the government prove that any government officer or

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1 employee was in fact misled or deceived.

2 THE COURT: Okay. Thank you, Andrew.

3 If you'd like to just take a stretch, take a stretch
4 while we make a change.

5 (Pause.)

6 THE COURT: Okay. You may be seated.

7 All right. The next section is going to be read by
8 my law clerk, Ms. Strohmeier, and you've met her too.

9 So, Sequin, please go ahead.

10 MS. STROHMEIER: The next section concerns
11 Racketeering Act Two: Sexual Exploitation of a Child-Camila.

12 Racketeering Act Two alleges that the defendant
13 sexually exploited a child, specifically Camila, on or about
14 November 2nd, 2005. The indictment reads as follows:

15 "On or about November 2nd, 2005, within the Northern
16 District of New York, the defendant Keith Raniere did
17 knowingly and intentionally employ, use, persuade, induce,
18 entice and coerce a minor, to wit: Camila, to engage in
19 sexually explicit conduct for the purpose of producing one or
20 more visual depictions of such conduct, which visual
21 depictions were produced and transmitted using materials that
22 had been mailed, shipped and transported in and affecting
23 interstate and foreign commerce by any means, in violation of
24 Title 18, United States Code, Sections 2251(a) and 2251(e)."

25 Racketeering Act Two charges the defendant with

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1 violating Title 18, United States Code, Section 2251(a). That
2 section provides in relevant part that: "Any person who
3 employs, uses, persuades, induces, entices, or coerces any
4 minor to engage in, or who has a minor assist any other person
5 to engage in, or who transports any minor in or affecting
6 interstate or foreign commerce with the intent that such minor
7 engage in any sexually explicit conduct for the purpose of
8 producing any visual depiction of such conduct or for the
9 purpose of transmitting a live visual depiction of such
10 conduct, shall be punished if that visual depiction was
11 produced or transmitted using materials that had been mailed,
12 shipped, or transported in or affecting interstate or foreign
13 commerce by any means, including by computer."

14 To prove the defendant committed this racketeering
15 act, the government must prove the following three elements
16 beyond a reasonable doubt:

17 First, that Camila was under the age of eighteen at
18 the time of the acts alleged in the indictment;.

19 Second, that the defendant used, employed,
20 persuaded, induced or enticed Camila to take part in sexually
21 explicit conduct for the purpose of producing or transmitting
22 a visual depiction of that conduct; and.

23 Third, that the visual depiction was to be mailed or
24 transported or transmitted in or affecting interstate or
25 foreign commerce or using a facility of interstate and foreign

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1 commerce or produced using materials that had been mailed,
2 shipped, or transported in and affecting interstate and
3 foreign commerce.

4 As to the first element, the government must prove
5 beyond a reasonable doubt that Camila was less than
6 eighteen years old at the time of the acts alleged in the
7 indictment. The government does not need to prove that the
8 defendant knew that Camila was less than eighteen years old.

9 As to the second element, the words "used,"
10 "employed," "persuaded," "induced" and "enticed" are words of
11 common usage and I instruct you to interpret these words by
12 using your own common sense. The words "persuade," "induce"
13 and "entice" are, in effect, synonyms that convey the idea of
14 leading or moving another person by persuasion as to some
15 action, state of mind, etc., or to bring about, produce or
16 cause.

17 A "visual depiction" includes any photograph, film,
18 video or picture, including undeveloped film and videotape,
19 data stored on computer disc or by electronic means which is
20 capable of conversion into a visual image or data that is
21 capable of conversion into a visual image that has been
22 transmitted by any means. A visual depiction includes a
23 digitally recorded photograph or video.

24 "Sexually explicit conduct" means, among other
25 things, actual or simulated sexual intercourse, including

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1 genital-genital, oral-genital, anal-genital, or oral-anal,
2 whether between persons of the same or opposite sex;
3 masturbation; or lascivious exhibition of the genitals or
4 pubic area of any person.

5 The term "lascivious exhibition" means a depiction
6 that displays the genitals or pubic area of a child in order
7 to excite lustfulness or sexual stimulation in the viewer.
8 Not every exposure of the genitals or pubic area constitutes
9 lascivious exhibition. In deciding whether a particular
10 visual depiction constitutes a lascivious exhibition, you
11 should consider the following questions:

12 whether the focal point of the visual depiction is
13 of the child's genitals or pubic area or whether there is some
14 other focal area;.

15 whether the setting of the visual depictions makes
16 it appear to be sexually suggestive, for example, in a place
17 or pose generally associated with sexual activity;.

18 whether the child is displayed in an unnatural pose
19 or in inappropriate attire, considering the age of the child;.

20 whether the child is fully or partially clothed or
21 nude, although nudity is not in and of itself lascivious;.

22 whether the visual depiction suggests sexual coyness
23 or a willingness to engage in sexual activity;.

24 And whether the visual depiction was intended or
25 designed to elicit a sexual response from the viewer.

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1 It is not required that a particular visual
2 depiction involve all of the factors that I have just listed
3 for you. The importance you give to any one factor is up to
4 you to decide.

5 While the government must prove that the defendant
6 acted with the purpose of producing a sexually explicit visual
7 depiction, the government does not need to prove that a visual
8 depiction of sexually explicit conduct was actually produced.
9 In deciding whether the government has proved that the
10 defendant acted for the purpose of producing or transmitting a
11 visual depiction of sexually explicit conduct, you may
12 consider all of the evidence concerning the defendant's
13 conduct.

14 Whether or not a minor consented to engage in
15 sexually explicit conduct is irrelevant, as the consent or
16 voluntary participation of a minor is not a defense to the
17 charge.

18 As to the third element of the underlying crime, I
19 will now further define what it means for a depiction to be
20 transported or transmitted in or affecting interstate or
21 foreign commerce or using a facility of interstate or foreign
22 commerce or produced using materials that had been mailed,
23 shaped and transported in and affecting interstate or foreign
24 commerce. If a visual depiction of sexually explicit conduct,
25 as I have defined that term, is recorded or stored on a device

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1 that was made either outside the State of New York or in a
2 foreign country, then that is sufficient to satisfy the
3 interstate or foreign commerce element. It is not necessary
4 for the government to prove that the defendant knew that the
5 device had been made outside of the State of New York or in a
6 foreign country.

7 I will now discuss Racketeering Act Three: Sexual
8 Exploitation of a Child-Camila.

9 Racketeering Act Two (sic) alleges that the
10 defendant sexually exploited a child, specifically Camila, on
11 or about November 24th, 2005. The indictment reads as
12 follows:

13 "On or about November 24th, 2005, within the
14 Northern District of New York, the defendant Keith Raniere did
15 knowingly and intentionally employ, use, persuade, induce,
16 entice and coerce a minor, to wit: Camila, to engage in
17 sexually explicit conduct for the purpose of producing one or
18 more visual depictions of such conduct which visual depictions
19 were produced and transmitted using materials that had been
20 mailed, shipped and transported in and affecting interstate
21 and foreign commerce by any means in violation of Title 18,
22 United States Code, Sections 2251(a) and 2251(e)."

23 I just instructed you regarding the crime of sexual
24 exploitation of a child under Racketeering Act Two. You
25 should apply those instructions here.

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1 THE COURT: Okay. Before we go further, Sequin just
2 read the charge in Racketeering Act Three, just to correct
3 what was misstated on the -- there's a misstatement on page
4 65, it says Two. So, it is Racketeering Act Three.

5 MS. STROHMEIER: Three.

6 THE COURT: And it is a different date from
7 Racketeering Act Two. We'll make the correction before you
8 receive the document, the charge in the jury room.

9 So, let's move on to Racketeering Act Four then.

10 MS. STROHMEIER: Racketeering Act Four: Possession
11 of Child Pornography.

12 Racketeering Act Four alleges that the defendant
13 possessed child pornography in or about and between
14 November 2005 and March 2018. The indictment reads as
15 follows:

16 "In or about and between November 2005 and
17 March 2018, both dates being approximate and inclusive, within
18 the Northern District of New York, the defendant Keith Raniere
19 did knowingly and intentionally possess matter containing one
20 or more visual depictions, to wit: images contained in digital
21 files stored on a Western Digital hard drive, which were
22 produced using materials which had been mailed and shipped and
23 transported using a means and facility of interstate and
24 foreign commerce and in and affecting interstate commerce, the
25 production of such visual depictions having involved the use

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1 of a minor engaging in sexually explicit conduct, and such
2 visual depictions were of such conduct, in violation of
3 Title 18, United States Code, Section 2252(a)(4)(B)."

4 Racketeering Act Four alleges a violation of
5 Title 18, United States Code, Section 2252(a)(4)(B). That
6 section provides in relevant part, that:

7 "Any person who knowingly possesses, or knowingly
8 accesses with intent to view, one or more books, magazines,
9 periodicals, films, videotapes, or other matter which contain
10 any visual depiction that has been mailed, or has been shipped
11 or transported using any means or facility of interstate or
12 foreign commerce or in or affecting interstate or foreign
13 commerce, or which was produced using materials which have
14 been mailed or so shipped or transported, by any means
15 including by computer, if the producing of such visual
16 depiction involves the use of a minor engaging in sexually
17 explicit conduct; and (ii) such visual depiction is of such
18 conduct shall be punished."

19 In order to prove the defendant guilty of possessing
20 child pornography, the government must establish beyond a
21 reasonable doubt:

22 First, that the defendant knowingly possessed a
23 visual depiction;.

24 Second, that the visual depiction was transported in
25 or affecting interstate or foreign commerce or the visual

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1 depiction was produced using materials that had been
2 transported in interstate or foreign commerce;.

3 Third, that the production of the visual depiction
4 involved the use of a minor engaging in sexually explicit
5 conduct and portrays that minor engaged in that conduct; and.

6 Fourth, that the defendant knew that the production
7 of the visual depiction involved the use of a minor engaging
8 in sexually explicit conduct and portrayed a minor engaged in
9 that conduct.

10 The first element that the government must prove
11 beyond a reasonable doubt is that the defendant knowingly and
12 intentionally possessed a visual depiction. You have already
13 been instructed on the meaning of the term "visual depiction."
14 I have already explained the meaning of "knowingly and
15 intentionally" and those instructions apply here. To
16 "possess" something means to have it within a person's
17 control. This does not necessarily mean that the person must
18 hold it physically, that is have actual physical possession of
19 it. As long as the visual depiction is within a person's
20 control, he possesses it. If you find that the defendant
21 either had actual possession of the depiction or that he had
22 the power and intention to exercise control over it, even
23 though it was not in his physical possession, you may find
24 that the government has proved possession. The government
25 must prove that the defendant received the depiction

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1 knowingly, as I have already defined that term.

2 As to the second element, the government must prove
3 beyond a reasonable doubt that the visual depiction was to be
4 mailed or transported or transmitted in or affecting
5 interstate or foreign commerce or using a facility of
6 interstate and foreign commerce or produced using materials
7 that had been mailed, shipped or transported in or affecting
8 interstate or foreign commerce. Here, the government alleges
9 that the images in question were produced using material that
10 had been mailed, shipped or transported in or affecting
11 interstate or foreign commerce. I instruct you that, as a
12 matter of law, if a visual depiction of sexually explicit
13 conduct, as I have defined that term, is recorded or stored on
14 a device that was made either outside the State of New York or
15 in a foreign country, then that is sufficient to satisfy this
16 element.

17 The third element that the government must prove
18 beyond a reasonable doubt is that the production of the visual
19 depiction involved the use of a minor engaging in sexually
20 explicit conduct, as I have already explained that term to
21 you, and portrays that minor engaged in that conduct. The
22 visual depiction must be of a real person under the age of
23 eighteen engaging in sexually explicit conduct. Although the
24 government does not have to prove the identity of the minor or
25 the exact age of the minor, the government alleges that the

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1 depictions at issue here are of Camila. You may consider all
2 of the evidence in determining whether the depiction portrayed
3 an actual person under the age of eighteen engaging in
4 sexually explicit conduct.

5 The fourth element that the government must prove
6 beyond a reasonable doubt is that the defendant knew both that
7 the production of the visual depiction involved the use of a
8 minor engaging in sexually explicit conduct, and that it
9 portrayed a minor engaged in that conduct. As I stated
10 before, an act is done knowingly when it is done voluntarily
11 and intentionally and not because of accident, mistake or some
12 other innocent reason. In this case the term "knowingly"
13 refers to an awareness of the sexually explicit nature of the
14 material and to the knowledge that the visual depiction was in
15 fact of an actual minor engaged in that sexually explicit
16 conduct.

17 The government must show that the defendant had
18 knowledge of the general nature of the contents of the
19 material. The defendant need not have specific knowledge as
20 to the identity or actual age of the minor depicted, but the
21 defendant must have knowledge or an awareness that the
22 material contained a visual depiction of a minor engaging in
23 sexually explicit conduct. Such knowledge may be shown by
24 direct or circumstantial evidence, or both. Eyewitness
25 testimony of the defendant's viewing of the material is not

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1 necessary to prove his awareness of its contents; the
2 circumstances may warrant an inference that he was aware of
3 what the material depicts. Furthermore, the defendant's
4 belief as to the legality or illegality of the material is
5 irrelevant.

6 The next section is Racketeering Act Five:
7 Conspiracy to Commit Identity Theft.

8 Racketeering Act Five alleges that the defendant
9 committed three separate crimes, conspiracy to commit identity
10 theft, the identity theft of James Loperfido, and the identity
11 theft of Edgar Bronfman. Thus, Racketeering Act Five has
12 three parts to it, and you will render separate verdicts on
13 each part. If you find the defendant committed any of these
14 three crimes, you must find that the government has proved
15 Racketeering Act Five.

16 I will first discuss Racketeering Act 5A: Conspiracy
17 to Commit Identity Theft.

18 The first part, which is referred to on the verdict
19 sheet as Racketeering Act 5A, alleges that the defendant
20 conspired to commit identity theft between November 2005 and
21 November 2008. The indictment reads as follows:

22 "In or about and between August 2005 and
23 November 2008, both dates being approximate and inclusive,
24 within the Northern District of New York and elsewhere, the
25 defendant Keith Raniere, together with others, did knowingly

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1 and intentionally conspire to transfer, possess and use,
2 without lawful authority and in and affecting interstate and
3 foreign commerce, one or more means of identification of one
4 or more other persons with the intent to commit, and to aid
5 and abet, and in connection with, unlawful activity that
6 constituted one or more violations of federal law, to wit:
7 (1) intercepting wire and electronic communications in
8 violation of Title 18, United States Code, Section 2511; and
9 (2) unlawfully accessing wire and electronic communications,
10 in violation of Title 18, United States Code, Section 2701,
11 contrary to Title 18, United States Code, Section 1028(a)(7),
12 all in violation of Title 18, United States Code, Section
13 1028(f)."

14 I have already instructed you on the general
15 definition of conspiracy, which, as I said, is an agreement
16 among two or more people to commit a crime. I remind you that
17 the crime of conspiracy to violate a federal law is a separate
18 offense from the underlying crime. It is separate and
19 distinct from an actual violation of identity theft which is
20 the object of the conspiracy and what we call the substantive
21 crime. In order to find the defendant guilty of conspiracy to
22 commit identity theft, you must find that two or more persons
23 agreed to commit the crime of identity theft and that the
24 defendant knowingly and intentionally became a member of the
25 conspiracy.

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1 I also previously instructed you regarding the law
2 on the crime of identity theft under Racketeering Act 1A.
3 However, because Racketeering Act 5A alleges that the
4 defendant or a co-conspirator acted with the intent to commit,
5 or to aid and abet, or in connection with, a different federal
6 crime, the fourth element is different. I will therefore
7 instruct you on the law that you should consider for
8 Racketeering Act 5A. The elements of the crime of identity
9 theft are as follows:

10 First, that the defendant or a co-conspirator
11 knowingly transferred, or possessed, or used a means of
12 identification of another person;.

13 Second, the defendant or a co-conspirator knew that
14 the means of identification belonged to another person;.

15 Third, that the defendant or a co-conspirator acted
16 without lawful authority;.

17 Fourth, that the defendant or a co-conspirator acted
18 with the intent to commit, or to aid and abet, or in
19 connection with an unlawful activity that violates federal
20 law; and.

21 Fifth, that the transfer or possession or use of the
22 means of identification occurred in or affected interstate or
23 foreign commerce or the means of identification was
24 transported in the mail in the course of the transfer or
25 possession or use.

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1 As to the first element, the government must prove
2 beyond a reasonable doubt that at item described in the
3 indictment is a means of identification of another person. I
4 have already defined the terms "means of identification,"
5 "use," "transfer," and "possess" and will not repeat them
6 here. I instruct you that user names and passwords may
7 constitute a means of identification of another person.

8 As to the third element, the government must prove
9 that the defendant or a co-conspirator was not authorized to
10 use the means of identification. The government must also
11 prove that the defendant or a co-conspirator used or
12 transferred or possessed the means of identification
13 knowingly, that is, he or she did so voluntarily and
14 intentionally and not because of accident, mistake or some
15 other innocent reason.

16 (Continued on next page.)
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1 MS. DAVIS: (Continued) As to the fourth element,
2 the Government must prove beyond a reasonable doubt that the
3 defendant or a co-conspirator used or transferred or possessed
4 the means of identification with the intent to commit, or
5 to aid and abet, or in connection with either one of two
6 federal crimes: The crime of intercepting wire and electronic
7 communications in violations of Title 18 United States Code
8 2511; or, two, the crime of unlawfully accessing wire and
9 electronic communications in violation of Title 18 United
10 States Code, Section 2701. In relevant part the, crime of
11 intercepting wire and electronic communication in violation of
12 Title 18 United States Code, Section 2511 prohibits accessing
13 without authorization a system through which electronic
14 communication service is provided and obtaining wire or
15 electronic communications. In relevant part, the crime of
16 unlawfully accessing wire and electronic communications in
17 violation of Title 18 United States Code, Section 2701,
18 prohibits intercepting electronic communications. I instruct
19 you that an e-mail is a wire or electronic communication.

20 To establish this fourth element of identity theft
21 the Government does not need to prove that the defendant or a
22 co-conspirator actually committed either of these two crimes.
23 This element is satisfied if you find that the Government
24 proved beyond a reasonable doubt that the defendant used or
25 transferred or possessed the means of identification or

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1 conspired to do so with the intent to committed, aid and abet,
2 or in connection with either of these offenses.

3 Finally, as to the fifth element, I instruct you
4 that interstate or foreign commerce simply means the movement
5 of goods, services, money, and individuals between any two or
6 more states or a state and a foreign country. To satisfy this
7 element, the Government must prove that the defendant's
8 conduct affected interstate or foreign commerce in any way, no
9 matter how minimal.

10 If you find that the Government proved beyond a
11 reasonable doubt that the defendant knowingly and
12 intentionally agreed with others to commit the crime of
13 identity theft, then you should find the defendant guilty of
14 Racketeering Act 5A. As I already instructed you, a
15 conspiracy is a crime, even if it does not achieve its
16 purpose. The Government does not have to prove that the
17 defendant or his co-conspirators actually committed the crime
18 of identity theft. What the Government must prove is that the
19 defendant voluntarily entered into a conspiracy, the purpose
20 of which was to commit identity theft.

21 I will now discuss Racketeering Act 5B, identity
22 theft James Loperfido. The second part of Racketeering Act 5,
23 which is referred to on the verdict sheet as Racketeering Act
24 5B, alleges that the defendant committed, or aided or abetted
25 the commission of the identity theft of James Loperfido. The

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1 Indictment read as follows:

2 "In or about and between January 2006 and
3 November 2008, both dates being approximate and inclusive,
4 within the Northern District of New York and elsewhere, the
5 defendant Keith Raniere, together with others did knowingly
6 and intentionally transfer, possess and use without lawful
7 authority and in and affecting interstate commerce one or more
8 means of identification of another person, to wit; James
9 Loperfido, with the intent to commit and to aid and abet and
10 in connection with unlawful activity that constituted one or
11 more violations of federal law, to wit; One, intercepting wire
12 and electronic communications in violation of Title 18 United
13 States Code, Section 2511; and Two, unlawfully accessing wire
14 and electronic communications in violation of Title 18 United
15 States Code, Section 2701. All in violation of Title 18
16 United States Code, Sections 1028(a)(7) and 2.

17 To prove this crime, the Government must prove the
18 following elements beyond a reasonable doubt.

19 First, that the defendant knowingly transferred or
20 possessed or used a means of identification of James
21 Loperfido.

22 Second, the defendant knew that the means of
23 identification belonged to James Loperfido.

24 Third, that the defendant acted without lawful
25 authority.

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1 Fourth, that the defendant acted with the intent to
2 commit or to aid and abet, or in connection with, the crime of
3 intercepting wire and electronic communications in violation
4 of Title 18 United States Code, Section 2511, or the crime of
5 unlawfully accessing wire and electronic communications in
6 violation of Title 18 United States Code, Section 2701.

7 And Fifth, that the transfer or possession or use of
8 the means of identification occurred in or affected interstate
9 or foreign commerce, or the means of identification was
10 transported in the mail in the course of the transfer or
11 possession or use.

12 I've already instructed you regarding the elements
13 of the crime of identity theft under Racketeering Act 5A, you
14 should refer to those instructions when considering this
15 count.

16 You may also find the defendant guilty of
17 Racketeering Act 5B if the Government has proved beyond a
18 reasonable doubt that he aided and abetted the identity theft
19 of James Loperfido. In determining whether the defendant is
20 guilty as an aider and abettor, you must follow the general
21 instructions on aiding and abetting under federal law that I
22 have already given you.

23 Finally, Racketeering Act 5C, identity theft Edgar
24 Bronfman.

25 The third part of Racketeering Act 5, which is

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1 referred to on the verdict sheet as Racketeering Act 5C,
2 alleges that the defendant committed, or aided and abetted the
3 commission of, the identity theft of Edgar Bronfman. The
4 Indictment reads as follows.

5 "In or about and between January 2006 and
6 November 2008, both dates being approximate and inclusive,
7 within the Northern District of New York and elsewhere, the
8 defendant Keith Raniere, together with others did knowingly
9 and intentionally transfer, possess and use without lawful
10 authority and in and affecting interstate commerce, one or
11 more means of identification of another person; to wit, John
12 Doe 2, with the intent to commit, and to aid and abet, and in
13 connection with unlawful activity that constituted one or more
14 violations of federal law; to wit, One intercepting wire and
15 electronic communications in violation of Title 18 United
16 States Code, Section 2511; and Two, unlawfully accessing wire
17 and electronic communications in violation of Title 18 United
18 States Code, Section 2701, all in violation of Title 18 United
19 States Code, Sections 1028(a)(7) and 2."

20 I have just instructed you regarding the elements of
21 this crime. You should apply those instructions here.

22 You may also find the defendant guilty of
23 Racketeering Act 5C if the Government has proved beyond a
24 reasonable doubt that he aided and abetted the identity theft
25 of Edgar Bronfman. In determining whether the defendant is

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1 guilty as an aider and abettor, you must follow the general
2 instructions on aiding and abetting under federal law that I
3 have already given you.

4 The next section concerns Racketeering Act 6,
5 conspiracy to alter records for use in an official proceeding.

6 Racketeering Act 6 alleges that the defendant
7 conspired to alter records for use in an official proceeding
8 in or about and between February 2008 and March 2018. The
9 Indictment reads as follows:

10 "In or about and between February 2008 and
11 March 2018, both dates being approximate and inclusive, within
12 the District of New Jersey and elsewhere, the defendant Keith
13 Raniere, together with others did knowingly and intentionally
14 conspire to corruptly alter, destroy, mutilate and conceal one
15 or more records, documents and other objects; to wit, video
16 recordings, with the intent to impair such objects' integrity
17 and availability for use in an official proceeding; to wit,
18 NXIVM Corp., et al Versus Ross Institute, et al
19 06-CV-1051(DNJ), contrary to Title 18 United States Code,
20 Section 1512(c)(1), all in violation of Title 18 United States
21 Code, Section 1512(k)."

22 I have already instructed you on the general
23 definition of conspiracy, which as I said, is an agreement
24 among two or more people to commit a crime. Here the alleged
25 crime is altering records for use in an official proceeding.

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1 Therefore, in order to prove this Racketeering Act, the
2 Government must prove that two or more persons agreed to alter
3 records for use in an official proceeding, and that the
4 defendant knowingly and intentionally became a member of the
5 conspiracy. The relevant statute is Section 1512(c)(1) of
6 Title 18 United States Code, which provides that, quote,
7 "Whoever corruptly alters, destroys, mutilates or conceals a
8 record document or other object or attempts to do so with the
9 intent to impair the objects' integrity or availability for
10 use in an official proceeding, shall be guilty of a crime."

11 The elements of the crime of altering records for
12 use in an official proceeding are as follows:

13 First, that the defendant or a co-conspirator
14 knowingly altered or destroyed or mutilated or concealed any
15 record, document, or tangible object as alleged in the
16 Indictment.

17 Second, that the defendant or a co-conspirator acted
18 with the intent of impairing the object's integrity or
19 availability for use in an official proceeding.

20 And Third, that the defendant or a co-conspirator
21 acted corruptly. I.

22 Will now explain each element in greater detail.

23 The first element the Government must prove beyond a
24 reasonable doubt is that the defendant or a co-conspirator
25 altered, or destroyed or mutilated or concealed any record

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1 document or tangible object as alleged in the Indictment.

2 The second element the Government must prove beyond
3 a reasonable doubt is that the defendant acted with the intent
4 to impair the object's integrity or availability in an
5 official proceeding. An official proceeding means a
6 proceeding before a court, judge, or federal agency. You are
7 instructed that a civil court case in the United States
8 District Court for the District of New Jersey is an official
9 proceeding.

10 The third element the Government must prove beyond a
11 reasonable doubt is that the defendant acted corruptly. To
12 act corruptly means to act with an improper purpose and to
13 engage in conduct knowingly and dishonestly and with the
14 intent to obstruct, impede or influence the due administration
15 of justice. A defendant does not need to know with certainty
16 that his conduct would affect judicial proceedings. Indeed,
17 the Government does not need to prove that the defendant's
18 conduct actually obstructed justice, or that the altered
19 records contained particularly material evidence pertaining to
20 the official proceedings. Instead, the defendant's conduct
21 must only have the natural and probable affect of interfering
22 with the due administration of justice.

23 The due administration of justice refers to the
24 fair, impartial, uncorrupted and unimpeded investigation,
25 prosecution, or disposition of any matter in the courts of the

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1 United States. It includes every step in a matter or
2 proceeding in the federal courts to assure that just
3 consideration and determination of the rights of parties,
4 whether Government or individual.

5 A defendant's knowledge is a matter of inference
6 from the facts proved. Since we have no way of looking into a
7 person's mind directly, the fact of knowledge or intent may be
8 established by circumstantial evidence, just as any other fact
9 in this case.

10 If you find that the Government proved beyond a
11 reasonable doubt that the defendant knowingly and
12 intentionally agreed with others to commit the crime of
13 obstruction of justice, then you should find the defendant
14 guilty of Racketeering Act 6. As I already instructed, a
15 conspiracy is a crime even if it does not achieve its purpose.
16 The Government does not have to prove that the defendant or
17 his co-conspirators actually committed the crime of
18 obstruction of justice. What the Government must prove is
19 that the defendant voluntarily entered into a conspiracy whose
20 purpose was to commit obstruction of justice.

21 Next I'll discuss Racketeering Act 7, conspiracy to
22 commit identity theft, Marianna.

23 Racketeering Act 7 charges the defendant with
24 conspiring to commit identity theft as to Marianna in or about
25 November 2008. The Indictment reads as follows:

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1 "In or about November 2008, within the Northern
2 District of New York and elsewhere, the defendant Keith
3 Raniere, together with others, did knowingly and intentionally
4 conspire to transfer, possess and use without lawful authority
5 and in and affecting interstate commerce, one or more means of
6 identification of another person; to wit, Marianna, with the
7 intent to commit and to aid and abet, and in connection with
8 unlawful activity that constituted one or more violations of
9 federal law; to wit, intercepting wire and electronic
10 communications in violation of Title 18 United States Code,
11 Section 2511, and unlawfully accessing wire and electronic
12 communications in violation of Title 18 United States Code,
13 Section 2701, contrary to Title 18 United States Code, Section
14 1028(a)(7) all in violation of Title 18 United States Code,
15 Section 1028(f)."

16 I previously instructed you on the elements of the
17 crime of conspiracy to commit identity theft under
18 Racketeering Act 5A, you should apply those instructions here.

19 Next I'll discuss Racketeering Act 8, trafficking of
20 Daniela for forced labor and document servitude.

21 Racketeering Act 8 alleges that the defendant
22 committed two separate crimes, the trafficking of Daniela for
23 labor and services in violation of Title 18 United States
24 Code, Section 1590, and the document servitude of Daniela in
25 violation of Title 18 United States Code, Section 1592. Thus,

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1 Racketeering Act 8 has two parts to it. You will render
2 separate verdicts on each part. If you find that the
3 defendant committed either of these two crimes, you must find
4 that the Government has proved Racketeering Act 8.

5 The first part is Racketeering Act 8A, trafficking
6 of Daniela for labor and services.

7 The first part, which is referred to on the verdict
8 sheet as Racketeering Act 8A, alleges that the defendant
9 trafficked Daniela for labor and services. The Indictment
10 reads as follows:

11 "In or about and between March 2010 and April 2012,
12 both dates being approximate and inclusive, within the
13 Northern District of New York and elsewhere, the defendant
14 Keith Raniere, together with others did knowingly and
15 intentionally recruit, harbor, transport, provide and obtain a
16 person; to wit, Daniela, for labor and services in violation
17 of Title 18 United States Code Chapter 77; to wit, forced
18 labor in violation of Title 18 United States Code, Section
19 1589 in violation of Title 18 United States Code, Section 1590
20 and 2."

21 The statute relevant to this Racketeering Act is
22 Section 1590. It provides in relevant part as follows:

23 "Whoever knowingly recruits, harbors, transports
24 provides or obtains by any means any person for labor or
25 services in violation of this chapter commits a crime."

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1 In order to prove this Racketeering Act the
2 Government must prove beyond a reasonable doubt each of the
3 following three elements.

4 First, the defendant recruited, harbored,
5 transported, provided or obtained Daniela.

6 Second, the defendant did so for the purpose of
7 providing or obtaining the labor or services of Daniela in
8 violation of the forced labor statute, Section 1589; that is,
9 that the defendant trafficked Daniela, as I have just
10 described, with the purpose of providing or obtaining her
11 labor or services by means of serious harm or threats of
12 serious harm to Daniela or another person, or by means of any
13 scheme plan or pattern intended to cause Daniela to believe
14 that if Daniela did not perform such labor or services Daniela
15 or another person would suffer serious harm or physical
16 restraint. Labor or services that are provided or obtained by
17 these unlawful means are called forced labor.

18 And Third, the defendant acted knowingly.

19 With respect to the first element, the word harbor
20 simply means to provide shelter to that person. To obtain
21 someone means to acquire control or possess that person, even
22 if only for a short period.

23 With respect to the second element, the Government
24 must prove beyond a reasonable doubt that the defendant
25 recruited, harbored, transported, provided or obtained

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1 Daniela; that is, the defendant trafficked Daniela for the
2 purpose of providing or obtaining Daniela's forced labor; that
3 is, labor or services provided or obtained by one of the
4 prohibited means that I described a moment ago. The crime
5 prohibited by Section 1590 is trafficking a person for this
6 unlawful purpose. To establish this element the Government
7 does not need to prove that the defendant actually obtained or
8 attempted to obtain Daniela's forced labor. Only that the
9 defendant trafficked Daniela for the purpose of providing or
10 obtaining it.

11 I will define for you some of the terms you will
12 consider in determining whether the defendant had this
13 unlawful purpose.

14 First, labor means the expenditure of physical or
15 mental effort. And services means conduct or performance that
16 assists or benefits someone.

17 A threat is a serious statement expressing an
18 intention to inflict harm at once or in the future, which is
19 different from idle or careless talk, exaggeration or
20 something said in a joking manner. For a statement to be a
21 threat, it must have been made under such circumstances that a
22 reasonable person who heard or read the statement would
23 understand it as a serious expression of an intent to cause
24 harm. In addition, the statement must have been made with the
25 intent that it be a threat, or with the knowledge the

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1 statement would be viewed as a threat.

2 The term serious harm includes both physical and
3 non-physical types of harm. It can include psychological,
4 financial or reputational harm. Therefore, a threat of
5 serious harm need not involve any threat of physical violence.

6 I instruct you that threats of deportation or being forced to
7 leave the United States may constitute such serious harm.

8 However, the threats must be serious enough that considering
9 all the surrounding circumstances, a reasonable person of the
10 same background and in the same circumstances as the alleged
11 victim, would perform or continue performing labor that the
12 victim would otherwise not have willingly performed in order
13 to avoid that harm. In considering whether a threat of harm
14 would be sufficient to compel or coerce an alleged victim's
15 services, you may consider the totality of the defendant's
16 conduct as well as the victim's age and background or
17 circumstances that were known to the defendant and that would
18 make the alleged victim especially vulnerable to pressure.

19 You may consider surrounding circumstances, such as verbal
20 abuse and insults, isolation, poor working and living
21 conditions, denial of adequate rest, food and medical care,
22 pay withholding or any combination of these conditions and any
23 other techniques you find that the defendant used to
24 intimidate Daniela and compel her to work.

25 You should give the words scheme, plan and pattern

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1 their ordinary meaning. A scheme is a plan or program of
2 action, especially a crafty or secret one. A plan is a method
3 for achieving an end or a detailed formulation of a program of
4 action. A pattern is a mode of behavior or series of acts
5 that are recognizably consistent.

6 If you find that the defendant trafficked Daniela
7 for the unlawful purpose I have described, the fact that
8 Daniela may have had an opportunity to escape is irrelevant if
9 the defendant placed her in such fear or circumstances that
10 the victim reasonably believed that she could not leave. A
11 victim who has been placed in such fear or circumstances is
12 under no affirmative duty to try to escape.

13 When considering whether the defendant had the
14 unlawful purposes I described to you, you must also consider
15 any condition that made Daniela vulnerable to pressure, so
16 long as you believe the defendant also knew about it. You may
17 consider, for example, the background, physical and mental
18 condition, experience, education, socioeconomic status and any
19 inequalities between Daniela and the defendant, but only if
20 these conditions were known to the defendant at the time.
21 Simply put, you may ask whether Daniela was vulnerable in some
22 way known to the defendant such that the defendant's actions
23 or planned actions, even if not sufficient to compel another
24 person, were enough to compel Daniela to work.

25 I previously instructed you as to the definition of

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1 knowingly and you should apply that definition to the third
2 element here.

3 Racketeering Act 8A is also charged under an aiding
4 and abetting theory; that is, that the defendant aided and
5 abetted another in trafficking Daniela for the unlawful
6 purpose I have described. You may find Racketeering Act 8A
7 proven as to the defendant if you find that he aided and
8 abetted the trafficking of Daniela. I have already instructed
9 you on aiding and abetting under federal law. When
10 deliberating on Racketeering Act 8A, apply those instructions.

11 I'll now discuss Racketeering Act 8B, document
12 servitude, Daniela.

13 The second part of Racketeering Act 8, which is
14 referred to on the verdict sheet as Racketeering Act 8B,
15 alleges that the defendant committed the crime of document
16 servitude. The Indictment reads as follows:

17 "In or about and between March 2010 and April 2012
18 both dates being approximate and inclusive, within the
19 Northern District of New York and elsewhere, the defendant
20 Keith Raniere, together with others did knowingly and
21 intentionally conceal, remove, confiscate and possess one or
22 more immigration documents, an actual Government
23 identification documents of a person; to wit, Daniela, in the
24 course of and with the intent to commit one or more violations
25 of Title 18 United States Code, Sections 1589 and 1590, all in

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1 violation of Title 18 United States Code Section 1592 and 2."

2 The relevant statute is Section 1592 of Title 18
3 United States Code, which provides in relevant part that,
4 quote, "Whoever knowingly destroys, conceals, removes,
5 confiscates or possesses any actual or purported passport or
6 other immigration document or any other actual or purported
7 Government identification document of another person; One, in
8 the course of a violation of Section 1589, the forced labor
9 statute or 1590 the trafficking statute; or Two, with intent
10 to violate Section 1589, the forced labor statute, or 1590 the
11 trafficking statute, has committed a crime."

12 In order to prove this Racketeering Act the
13 Government must prove beyond a reasonable doubt each of the
14 following three elements.

15 First, that the defendant concealed, removed
16 confiscated or possessed an actual or purported passport, visa
17 or other identification document of Daniela.

18 Second, that the defendant did so, One, in the
19 course of violating the forced labor statute or trafficking
20 statute; or Two, with intent to violate the forced labor
21 statute or trafficking statute.

22 And Third, that defendant acted knowingly.

23 With respect to the first element, the word conceal
24 means the act of refraining from disclosure or preventing the
25 discovery of the document or hiding the document. To remove

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1 means to take away or transfer from one place to another. To
2 confiscate means to appropriate or seize the document. To
3 possess means to hold and have actual control of the document.
4 The term identification document, includes in relevant part, a
5 document made or issued by or under the authority of the
6 United States Government, a foreign Government, political
7 subdivision of a foreign Government, an international
8 Governmental or an international quasi-Governmental
9 organization, which when completed with information concerning
10 a particular individual is of a type intended or commonly
11 accepted for the purpose of identification of individuals.

12 With respect to the second element, the Government
13 must prove that the defendant engaged in the concealment,
14 removal, confiscation or possession of the document either;
15 One, in the course of violating the forced labor statute
16 Section 1589 or the trafficking statute Section 1590; or Two,
17 with the intent to commit forced labor or trafficking. When
18 considering whether the defendant concealed, removed
19 confiscated or possessed the documents in the course of a
20 forced labor or trafficking offense, you should consider the
21 instructions that I previously gave you regarding forced labor
22 and trafficking. When considering whether the defendant
23 concealed, removed, confiscated or possessed the documents
24 with intent to violate the forced labor or trafficking
25 statutes, I instruct you that the Government need not prove an

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1 actual violation of the forced labor or trafficking statute to
2 prove this element beyond a reasonable doubt. Even if the
3 defendant did not succeed in committing forced labor or
4 trafficking, this element will be satisfied if the defendant
5 concealed, removed, confiscated or possessed the documents and
6 acted with the intent to violate the forced labor or
7 trafficking statutes.

8 With respect to the third element, I have previously
9 instructed you on the definition of knowingly and you should
10 apply that definition here.

11 THE COURT: Thank you. At this time we'll take five
12 minutes and try to finish today. I'll rise.

13 (Jury exits the courtroom.)

14 (Brief recess.)

15 THE COURT: If we don't finish with by five, we
16 checked with the jury they can't stay past five, several of
17 the jurors have commitments and we'll just finish first thing
18 tomorrow morning.

19 But in the meantime, at 5:00 o'clock, you can start
20 putting together all the evidence so that we're ready to role
21 it in tomorrow morning first thing.

22 Let's bring in the jury.

23 (Jury enters the courtroom.)

24 THE COURT: Please be seated.

25 My law clerk Eleanor Davis will take us through the

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1 next portion of the charge.

2 MS. DAVIS: The next section discusses Racketeering
3 Act 9, State law extortion.

4 Racketeering Act 9 charges the defendant with
5 extortion under New York State law in or about and between
6 September 2015 and June 2017. The Indictment reads as
7 follows.

8 "In or about and between September 2015 and
9 June 2017, both dates being approximate and inclusive, within
10 the Eastern District of New York and elsewhere, the defendant
11 Keith Raniere, together with others, did knowingly and
12 intentionally steal property by extortion, in that Raniere and
13 others obtained property; to wit, personal property and other
14 things of value by compelling and inducing one or more
15 persons; to wit, lower-ranking DOS members to deliver such
16 property by instilling in them a fear that if the property
17 were not so delivered, Raniere and others would; One, expose a
18 secret and publicize an asserted fact, whether true or false,
19 tending to subject one or more persons to hatred, contempt and
20 ridicule; and Two, perform an act which would not in itself
21 materially benefit Raniere and others, but which was
22 calculated to harm one or more persons materially with respect
23 to their health, safety, business, calling, career, financial
24 condition, reputation, and personal relationships in violation
25 of New York Penal Law Sections 155.30(6), 155.05(2)(e)(v),

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1 155.05(2)(e)(ix) and 20.00."

2 Racketeering Act 9 charges the defendant with
3 committing fourth degree grand larceny under New York State
4 Penal Law 155.30(6). Under New York State law, a defendant is
5 guilty of grand larceny in the fourth degree if he obtains
6 property illegally, and that property, regardless of its
7 nature and value, is obtained by extortion.

8 A person obtains person illegally when with intent
9 to deprive another of property or to appropriate the same to
10 himself or to a third person, that person wrongfully takes,
11 obtains or withholds such property from an owner of the
12 property. A person obtains property by extortion when that
13 person compels or induces another person to deliver such
14 property to himself or to a third person by means of
15 instilling in the victim a fear that if the property is not
16 delivered, the defendant or another person will expose a
17 secret or publicize an asserted fact, whether true or false,
18 tending to subject some person to hatred, contempt or
19 ridicule; or perform any other act which would not in itself
20 materially benefit the defendant or other person, but which is
21 calculated to harm another person materially with respect to
22 his health, safety, business, calling, career, financial
23 condition, reputation, or personal relationships.

24 Racketeering Act 9 is also charged under an aiding
25 and abetting theory; that is, that the defendant aided and

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1 abetted the extortion of lower-ranking DOS members. You may
2 find Racketeering Act 9 proven as to the defendant if you find
3 that the aided and abetted the extortion of lower-ranking DOS
4 members. I have already instructed willled you on aiding and
5 abetting under New York State law. When deliberating on
6 Racketeering Act 9, apply those instructions.

7 The next section discusses Racketeering Act 10, sex
8 trafficking and/or forced labor of Nicole.

9 Racketeering Act 10 alleges that the defendant
10 committed two separate crimes, sex trafficking of Nicole and
11 forced labor of Nicole. Thus, Racketeering Act 10 has two
12 parts to it, and you'll render separate verdicts on each part.
13 If you had find that the defendant committed either of these
14 two crimes, you must find that the Government has proved
15 Racketeering Act 10.

16 Racketeering Act 10A, sex trafficking of Nicole.

17 The first part of Racketeering Act 10, which is
18 referred to on the verdict sheet as Racketeering Act 10A,
19 charges the defendant with sex trafficking by force, fraud or
20 coercion as to Nicole between February 2016 and June 2017.
21 With respect to Racketeering Act 10A, the Indictment reads as
22 follows:

23 "In or about and between February 2006 and
24 June 2017, both dates being approximate and inclusive, within
25 the Eastern District of New York and elsewhere the defendant,

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1 Keith Raniere, together with others did knowingly and
2 intentionally recruit, entice, harbor, transport, provide
3 obtain, maintain, patronize and solicit a person; to wit,
4 Nicole, in and affecting interstate and foreign commerce. And
5 did benefit financially and by receiving anything of value
6 from such participation in a venture that engaged in such
7 acts, knowing and in reckless disregard of the fact that means
8 of force, threats of force, fraud and coercion, and a
9 combination of such means would be used to cause Nicole to
10 engage in one or more commercial sex acts, in violation of
11 Title 18 United States Code Sections 1591(a)(1), 1591(a)(2),
12 and 2."

13 The relevant statute provides in pertinent part,
14 whoever knowingly; One, in or affecting interstate or foreign
15 commerce recruits, entices, harbors, transports, provides or
16 obtains by any means a person; or Two, benefits, financially
17 or by receiving anything of value, from participation in a
18 venture which has engaged in an act just described, knowing
19 that force, fraud or coercion will be used to cause the person
20 to engage in a commercial sex act, will be punished."

21 To prove this crime the Government must prove beyond
22 a reasonable doubt the following four elements.

23 First, A, the defendant knowingly recruited,
24 enticed, harbored, transported, provided, maintained,
25 patronized or solicited a person by any means; or B, the

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1 defendant knowingly benefited financially or by receiving
2 something of value from participating in a venture that
3 recruited, enticed, transported, provided or obtained a
4 person.

5 Second, that the defendant knew or recklessly
6 disregarded that force, fraud or coercion would be used with
7 respect to such person.

8 Third, that the defendant knew that such person
9 would be engaged in a commercial sex act.

10 And Fourth, that defendant's conduct was in or
11 affecting interstate or foreign commerce.

12 I will now further define these elements.

13 The first element that the Government must prove is
14 that the defendant knowingly recruited, enticed, harbored,
15 transported, provided, obtained, maintained, patronized or
16 solicited a person, or that the defendant knowingly benefited
17 financially or by receiving something of value from
18 participating in a venture that did one of these things.

19 So, the statute sets forth two different ways that
20 the Government can prove this element. The first is by
21 proving that the defendant himself engaged in at least one of
22 a list of prohibited trafficking activities, and the second by
23 proving that the defendant took part in a venture that engaged
24 activities and that the defendant benefited financially or by
25 receiving a thing of value from that venture.

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1 The first way to satisfy the first element is by
2 proving that the defendant himself knowingly recruited,
3 enticed, harbored, transported, provided or obtained Nicole.
4 In considering whether the defendant did any of these things,
5 use the ordinary, everyday definitions of those terms. To
6 harbor a person means to provide shelter for that person. To
7 obtain person, refers to acquiring, controlling or possessing
8 that person for even a short period of time. To maintain
9 someone, means to upkeep someone, or to put care or work into
10 them.

11 I'll now explain the second alternative way to
12 satisfy the first element. To satisfy this element the second
13 way, the Government need not prove that the defendant himself
14 engaged in the trafficking activities of recruiting, enticing,
15 harboring, transporting, providing or obtaining a person. The
16 Government need only prove that there was a venture that
17 engaged in one of these activities, that the defendant
18 participated in somehow in the venture and that the defendant
19 benefited financially or by receiving a thing of value from
20 that venture. In considering whether the defendant
21 participated in such a venture, I instruct you that a venture
22 is defined as any group of two or more individuals associated
23 in fact, whether or not as a legal entity. So if two or more
24 people associated with one another, you may find that those
25 people formed a venture.

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1 You may find that the defendant participated in the
2 venture if the defendant in any way took part in that venture.
3 The defendant may be, but need not be, one of the people who
4 formed that venture. Likewise, the defendant need not be an
5 organizer or a main participant in the venture, and need not
6 have participated throughout the length of the venture. It is
7 enough if the defendant took some part in or played some role
8 in the venture for any period of time while the venture was
9 still ongoing. It is sufficient if the defendant played any
10 role in the venture, even if that role was minor, even if that
11 role was not related to the actual recruiting, enticing,
12 harboring, transporting, providing or obtaining of persons for
13 commercial sex acts that the venture engaged in.

14 Now, as I have stated, the defendant must also
15 benefit financially or by receiving a thing of value from the
16 venture. You may find that this requirement is satisfied if
17 the defendant received any form of profit, benefit, value or
18 advantage, no matter how minor from the venture. Of course,
19 if you find that the defendant himself recruited, enticed,
20 harbored, transported, provided or obtained, you need not
21 consider whether the defendant benefited from doing so. You
22 need only consider whether the defendant benefited if you find
23 that the defendant's involvement in sex trafficking was
24 through participating in the trafficking venture rather than
25 the trafficking activity itself.

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1 The statute also requires the Government to prove
2 that the defendant acted knowingly. So the Government must
3 prove that the defendant acted knowingly in either engaging in
4 the trafficking activity or joining in a venture that engaged
5 in a trafficking activity. I have already instructed you
6 regarding what it means to act knowingly. You should apply
7 that instruction here.

8 The second element the Government must prove beyond
9 a reasonable doubt is that the defendant knew or was in
10 reckless disregard of the fact that force, fraud or coercion
11 would be with respect to Nicole. Fraud, as I just used that
12 term, means that the defendant knowingly made a misstatement
13 or an admission of material fact to entice the victim. A
14 material fact is one that a reasonable person would expect to
15 rely on when making a decision.

16 Coercion means, A, a threat of serious harm or
17 physical restraint against a person; b, any scheme, plan or
18 pattern intended to cause a person to believe that failure to
19 perform an act would result in serious harm to or physical
20 restraint against a person; or C, the abuse or threatened
21 abuse of law or legal process. A threat is a serious
22 statement expressing an intention to inflict harm at once or
23 in the future, as distinguished when idle or careless talk,
24 exaggeration, or something said in a joking manner. A
25 statement is a threat if it was made under such circumstances

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1 that a reasonable person hearing the statement would
2 understand it as a serious expression of intent to cause harm.

3 The term serious harm, includes both physical and
4 non-physical types of harm, including psychological,
5 financial, or reputational harm, that is sufficient under all
6 the surrounding circumstances to compel a reasonable person of
7 the same background and in the same circumstances to perform
8 or to continue performing commercial sexual activity in order
9 to avoid incurring that harm. In determining whether the
10 defendant made a threat of serious harm, you should consider
11 the victim's particular station in life, physical and mental
12 condition, age, education, training, experience and
13 intelligence. A threat of serious harm must be sufficient in
14 kind or degree to completely overcome the will of an ordinary
15 person having the same general station in life as that of a
16 victim, causing a reasonable belief that there was no
17 reasonable choice except to engage in a commercial sex act as
18 directed by the defendant.

19 Coercion can also mean that the defendant engaged in
20 a course of behavior intended to cause the victim to believe
21 that if she did not engage in a commercial sex act as directed
22 by the defendant, any person, including the victim or someone
23 close to her, would suffer serious harm. Coercion can also
24 mean to use threats of legal action, whether administrative,
25 civil or criminal, in any manner or for any purpose for which

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1 the law was not designed in order to coerce someone into
2 working against that person's will.

3 To satisfy this element, the Government must prove
4 that force, fraud or coercion, as I have just defined those
5 terms, was used. And also that the defendant knew or was in
6 reckless disregard of the fact that it would be used against
7 Nicole. Whether or not the defendant had this knowledge is a
8 question of fact to be determined by you on the basis of all
9 the evidence. As a reminder, an act is done knowingly only if
10 it is done purposely and deliberately, and not because of
11 accident, mistake, negligence, or other innocent reason. If
12 you find that the evidence establishes beyond a reasonable
13 doubt that the defendant actually knew that coercion would be
14 used, then this element is satisfied. Even if the evidence
15 does not establish actual knowledge, this element is satisfied
16 if you find that the Government has proved beyond a reasonable
17 doubt that the defendant acted with reckless disregard of the
18 facts concerning the use of coercion. The phrase, reckless
19 disregard of the facts, means deliberate indifference to facts
20 that if considered and weighed in a reasonable manner indicate
21 the highest probability that the victim was coerced to engage
22 in a commercial sex act.

23 The third element that the Government must prove is
24 that the defendant knew that Nicole would be engaged in a
25 commercial sex act. A commercial sex act is any sex act

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1 anything of which anything of value is given to or received by
2 any person because of such sex act. It is not required that
3 the victim actually performed a commercial sex act, as long as
4 the Government has proved that the defendant recruited,
5 enticed, harbored, transported, provided, obtained,
6 maintained, patronized or solicited the victim for purposes of
7 engaging in commercial sex acts. A thing of value need not
8 involve monetary exchange and need not have any financial
9 component. The phrase, any sex act, should be given its plain
10 meaning and may include any act performed with another for
11 sexual gratification.

12 Lastly, the fourth element that the Government must
13 prove beyond a reasonable doubt is that the defendant's
14 conduct was in or affecting interstate or foreign commerce.
15 This definition is the same as previously described. As a
16 reminder, interstate or foreign commerce simply means the
17 movement of goods, services, money and individuals between any
18 two or more states, or between one state and the District of
19 Columbia or between a state and a U.S. territory or possession
20 or between the United States and a foreign country. To
21 satisfy this element the Government must prove that the
22 defendant's conduct affected interstate or foreign commerce in
23 any way, no matter how minimal. You do not up have to find
24 that the defendant's conduct actually affected interstate or
25 foreign commerce if you find that the defendant's conduct

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1 would have affected interstate or foreign commerce if he had
2 successfully and fully completed his actions. The Government
3 does not have to show that the defendant actually knew his
4 actions affected or would affect interstate or foreign
5 commerce.

6 You may also find Racketeering Act 10A proven if the
7 Government has proved beyond a reasonable doubt that the
8 defendant aided and abetted sex trafficking. In determining
9 whether the defendant is an aider and abettor, you must follow
10 the general instructions on aiding and abetting under federal
11 law that I have already given to you.

12 The next section discusses Racketeering Act 10B,
13 forced labor of Nicole.

14 The second part of Racketeering Act 10, which is
15 referred to on the verdict sheet as Racketeering Act 10B,
16 alleges that the defendant obtained the forced labor of
17 Nicole. With respect to Racketeering Act 10B, the Indictment
18 reads as follows:

19 "In or about and between February 2016 and
20 June 2017, both dates being approximate and inclusive, within
21 the Eastern District of New York and elsewhere, the defendant
22 Keith Raniere, together with others did knowingly and
23 intentionally provide and obtain the labor and services of a
24 person; to wit, Nicole, by means of; A, force, threats of
25 force, physical restraint, and threats of physical restraint,

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1 to her and one or more other persons; B, serious harm and
2 threats of serious harm to her and one or more other persons;
3 and C, one or more schemes, plans and patterns intended to
4 cause her to believe that if she did not perform such labor
5 and services she and one or more other persons would suffer
6 serious harm and physical restraint, and a combination of such
7 means in violation of Title 18 United States Code, Sections
8 1589(a) and 2."

9 The relevant statute reads as follows:

10 "Whoever knowingly obtains the labor or services of
11 another person; One, by means of force, threats of force,
12 physical restraint or threats of physical restraint to that
13 person or another person; Two, by means of serious harm or
14 threats of serious harm to that person or another person; or
15 Three, by means of any scheme, plan or pattern intended to
16 cause the person to believe that if the person did not perform
17 such labor or services that person or another person would
18 suffer serious harm or physical restraint, shall be guilty of
19 a crime."

20 To prove that the defendant committed this
21 Racketeering Act the Government must prove three elements
22 beyond a reasonable doubt.

23 First, the defendant obtained the labor or services
24 of Nicole.

25 Second, the defendant did so through one of the

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1 following prohibited means; A, through threats of serious harm
2 to or physical restraint against Nicole or any other person;
3 or B, through a scheme, plan, or pattern intended to cause
4 Nicole to believe that non-performance would result in serious
5 harm to, or physical restraint against, Nicole or any other
6 person.

7 And Third, the defendant acted knowingly.

8 The first element the Government must prove is that
9 the defendant obtained the labor or services of another
10 person, in this case Nicole. I have already instructed you on
11 the meaning of obtain and you should apply that instruction
12 here. Labor means the expenditure of physical or mental
13 effort. Services means conduct or performance that assist or
14 benefits someone. The Government does not have to prove that
15 Nicole performed work for the defendant in the economic sense,
16 although that would satisfy this element. All the Government
17 must prove is that Nicole provided labor or services, as I've
18 just defined them.

19 As to the second element, if you find that the
20 defendant obtained the labor or services of Nicole, then you
21 must determine whether the defendant did so through one of the
22 two prohibited means; that is, either through threats of
23 serious harm to or physical restraint against, a person, or
24 through a scheme, plan or pattern intended to cause the person
25 to believe that serious harm would result if she did not

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1 perform the labor or services required of her. In order to
2 find that the second element has been satisfied, you must find
3 beyond a reasonable doubt that at least one of the prohibited
4 means I just mentioned was used to obtain Nicole's labor or
5 services.

6 I now want to define some of the terms you will be
7 considering in determining whether or not this second element
8 of Racketeering Act 10B has been satisfied. As I previously
9 instructed, the term serious harm includes both physical and
10 non-physical types of harm, including psychological,
11 financial, or reputational harm. A threat of serious harm
12 therefore need not involve any threat of physical violence.
13 It includes improper threat of consequences, whether physical
14 or non-physical, that are sufficient under all the surrounding
15 circumstances, to compel or coerce a reasonable person in the
16 same situation to provide, or to continue providing, labor or
17 services in order to avoid that harm.

18 The words scheme, plan, and pattern are to be given
19 their ordinary meanings. The scheme, plan or pattern need not
20 involve actual threats of serious harm, but may involve any
21 other means, including deception or psychological coercion,
22 used to cause the victim to reasonably believe that she, her
23 family, or any other person would suffer serious harm if she
24 refused continue providing labor or services. If you find
25 that any of the two prohibited means I mentioned earlier was

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1 used, then you must determine whether such use was sufficient
2 to cause Nicole reasonably to believe that she had no choice
3 to work or remain working for the defendant. In making that
4 determination, you may consider the cumulative effect on
5 Nicole of the defendant's conduct.

6 You may also consider Nicole's special
7 vulnerabilities, if any. In this regard, you may find that
8 not all persons are of the same courage or firmness. You may
9 consider, for example, Nicole's background, physical and
10 mental condition, experience, education, socioeconomic status,
11 and any inequalities between Nicole and the defendant with
12 respect to these considerations, including their relative
13 station in life, among other things. Simply put, you may ask
14 whether Nicole was vulnerable in some way so the actions of
15 the defendant, even if not sufficient to compel another person
16 to work, were enough to compel Nicole to work.

17 A few final things about this second element of the
18 offense of forced labor. To prove forced labor, the
19 Government does not need to link each the threats allegedly
20 made or actions allegedly taken against Nicole to particular
21 labor tasks performed by her. If Nicole was threatened with
22 or suffered certain consequences in connection with the
23 services she rendered, either as punishment or as part of a
24 climate of fear that overcame her will and compelled her
25 service, that is sufficient to establish the second element of

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1 the offense of forced labor. The Government also need not
2 prove physical restraint, such as the use of chains, barbed
3 wire or locked doors in order to establish the offense of
4 forced labor. The fact that Nicole may have had an
5 opportunity to escape is irrelevant if the defendant placed
6 Nicole in such fear or circumstances that she did not
7 reasonably believe she could leave. A victim who has been
8 placed in such fear or circumstances is under no affirmative
9 duty to try to escape.

10 Finally, in considering whether service performed by
11 someone was involuntary, you are instructed that it is not a
12 defense to the crime of forced labor that the person may have
13 initially agreed voluntarily to render the service or perform
14 the work. If a person willingly begins work, but later
15 desires to withdraw, and is then forced to remain and perform
16 work against her will by threats of serious harm or by a
17 scheme, plan or pattern, intended to cause her to believe that
18 non-performance will result in serious harm to her or another
19 person, then her service becomes involuntary. Also, whether a
20 person is paid a salary or a wage is not determinative of the
21 question of whether that person has been held in forced labor.
22 In other words, if a person is compelled to labor against her
23 will by anyone of the means prohibited by the forced labor
24 statute, such services is involuntary, even if she is paid or
25 compensated for the work.

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1 With regard to the third element, the Government
2 must prove that a defendant acted knowingly, a concept that I
3 have already explained to you.

4 The next section is Racketeering Act 11, conspiracy
5 to commit identity theft of Pam Cafritz.

6 Racketeering Act 11 charges the defendant with
7 conspiracy to commit identity theft as to Pam Cafritz between
8 November 2016 and March 2018. The Indictment reads as
9 follows.

10 "In or about and between November 2016 and
11 March 2018, both dates being approximate and inclusive, within
12 the Northern District of New York and elsewhere the defendant,
13 Keith Raniere, together with others s, did knowingly and
14 intentionally conspire to transfer, possess and use without
15 lawful authority in and affecting interstate and foreign
16 commerce one or more means of identification of another
17 person; to wit, Pam Cafritz, with the intent to commit and to
18 aid and abet, and in connection with unlawful activity that
19 constituted one or more violations of federal law; to wit, tax
20 evasion, in violation of Title 26, United States Code, Section
21 7201, contrary to Title 18 United States Code, Section
22 1028(a)(7), all in violation of Title 18 United States Code,
23 Section 1028(f)."

24 I previously instructed you regarding the elements
25 of the crime of conspiracy to commit identity theft under

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1 Racketeering Act 5A; however, because Racketeering Act 11
2 alleges that the defendant or a co-conspirator acted with the
3 intent to commit or to aid and abet, or in connection with a
4 different federal crime, the fourth element is different. I
5 will therefore instruct you on the law that you should
6 consider for Racketeering Act 11.

7 As a reminder, the elements of the crime of identity
8 theft are as follows:

9 First, that the defendant or a co-conspirator
10 knowingly transferred or possessed or used a means of
11 identification of another person.

12 Second, that the defendant or a co-conspirator knew
13 that the means of identification belonged to another person.

14 Third, that the defendant or a co-conspirator acted
15 without lawful authority.

16 Fourth, that the defendant or a co-conspirator acted
17 with the intent to commit or to aid and abet or in connection
18 with an unlawful activity that violates federal law.

19 Fifth, that the transfer or possession or use of the
20 means of identification occurred in or affected interstate or
21 foreign commerce, or the means of identification was
22 transported in the mail in the course of the transfer or
23 possession or use.

24 (Continued on next page.)
25

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1 MS. DAVIS: As to the fourth element under
2 Racketeering Act 11, the Government must prove beyond a
3 reasonable doubt that the defendant or a co-conspirator used
4 or transferred or possessed the means of identification with
5 the intent to commit or to aid and abet, or in connection with
6 the crime of tax evasion in violation of Title 26, United
7 States Code, Section 7201.

8 In relevant part, the crime of tax evasion prohibits
9 the willful attempt to evade or defeat any tax imposed by the
10 Internal Revenue Code.

11 In this context, to act willfully requires the
12 Government to prove that the law imposed a duty on the
13 defendant; that the defendant knew of this duty, and that he
14 voluntarily and intentionally violated that duty.

15 To establish this fourth element of identity theft,
16 the Government does not need to prove that the defendant or a
17 co-conspirator actually committed tax evasion. This element
18 is satisfied if you find that the Government proved beyond a
19 reasonable doubt that the defendant used or transferred or
20 possessed the means of identification or conspired to do so
21 with the intent to commit, aid and abet, or in connection with
22 the crime of tax evasion.

23 I further instruct you that if the defendant used or
24 transferred or possessed the means of identification or
25 conspired to do so with the intent to commit, aid and abet, or

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1 in connection with an act that he believed in good faith was
2 lawful under the United States Tax Code, then he did not have
3 the intent to commit the crime alleged in Racketeering Act 11
4 and you should find it not proved.

5 If you find that the Government proved beyond a
6 reasonable doubt that the defendant knowingly and
7 intentionally agreed with others to commit the crime of
8 identity theft, then you should find the defendant guilty of
9 Racketeering Act 11.

10 As I already instructed you, a conspiracy is a crime
11 even if it does not achieve its purpose. The Government does
12 not have to prove that the defendant or his co-conspirators
13 actually committed the crime of identity theft. What the
14 Government must prove is that the defendant voluntarily
15 entered into a conspiracy whose purpose was to commit identity
16 theft.

17 I have just finished charging you on the 11
18 racketeering acts alleged in Count Two of the indictment.

19 In sum, to find the defendant guilty of Count Two,
20 you must find that the Government has proved the following
21 five elements beyond a reasonable doubt;

22 First: An enterprise as described in the indictment
23 existed on or about the time alleged in the indictment.

24 Second: The enterprise engaged in, or its
25 activities affected, interstate or foreign commerce.

JURY CHARGE

1 Third: The defendant was employed by, or was
2 associated with, the enterprise.

3 Fourth: The defendant knowingly conducted or
4 participated, either directly or indirectly, in the conduct of
5 the affairs of the enterprise.

6 And fifth: The defendant knowingly participated in
7 the conduct of the affairs of the enterprise through a pattern
8 of racketeering activity as described in the indictment, that
9 is, through the commission of at least two of the charged
10 racketeering acts which must have occurred within ten years of
11 each other, or through causing or aiding and abetting the
12 commission of two such racketeering acts.

13 The next section discusses Count One, racketeering
14 conspiracy.

15 Count One of the indictment charges the defendant,
16 Keith Raniere, with conspiring to violate the RICO statute.

17 Count One reads as follows:

18 "In or about and between 2003 and March 2018, both
19 dates being approximate and inclusive, within the Eastern
20 District of New York and elsewhere, the defendant, Keith
21 Raniere, also known as Vanguard, Grandmaster and Master,
22 together with others, being persons employed by and associated
23 with the enterprise, an enterprise that engaged in and the
24 activities which affected interstate and foreign commerce did
25 knowingly and intentionally conspire to violate Title 18,

JURY CHARGE

1 United States Code, Section 1962(c); that is, to conduct and
2 participate directly and indirectly in the conduct of the
3 affairs of such enterprise through a pattern of racketeering
4 activity as that determine is denied Title 18, United States
5 Code, Sections 1961(1) and 1961(5).

6 The pattern of racketeering activity through which
7 the defendant, Keith Raniere, together with others, agreed to
8 conduct and participate directly and indirectly in the conduct
9 of the affairs of the enterprise consisted of multiple acts
10 indictable under Title 18, United States Code, Section 1028;
11 identification document fraud and identification document
12 fraud conspiracy, and identity theft and identity theft
13 conspiracy. Title 18, United States Code, Section 1343; wire
14 fraud. Title 18, United States Code, Section 1512;
15 obstruction of justice and obstruction of justice conspiracy.
16 Title 18, United States Code, Section 1589; forced labor.
17 Title 18, United States Code, Section 1590; trafficking in
18 persons. Title 18, United States Code, Section 1591; sex
19 trafficking. Title, United States Code, Section 1592;
20 document servitude. Title 18, United States Code;
21 Section 2251, child exploitation. And Title 18, United States
22 Code, Section 2252; possession of child pornography.

23 And multiple acts involving extortion in violation
24 of New York Penal Law Sections 155.30(6) and 20.00.

25 It was part of the conspiracy that each defendant

JURY CHARGE

1 agreed that a conspirator would commit at least two acts of
2 racketeering in the conduct of the affairs of the enterprise."

3 In order to convict the defendant on the RICO
4 conspiracy offense charged in the indictment, the Government
5 must prove that the defendant knowingly agreed that he and/or
6 a conspirator would commit racketeering in violation of
7 Section 1962(c) of the RICO statute which, again, reads as
8 follows:

9 "It shall be unlawful for any person employed by, or
10 associated with, any enterprise engaged in, or the activities
11 of which affect interstate or foreign commerce, to conduct or
12 participate directly or indirectly in the conduct of such
13 enterprise's affairs through a pattern of racketeering
14 activity."

15 Thus, in order to convict the defendant on the RICO
16 conspiracy offense based on a conspiracy or an agreement to
17 violate Section 1962(c), the Government must prove the
18 following five elements beyond a reasonable doubt.

19 One: The existence of an enterprise or that an
20 enterprise would exist.

21 Two: The enterprise was, or would be, engaged in,
22 or its activities affected or would affect interstate or
23 foreign commerce.

24 Three: The defendant was, or would be, employed by
25 or associated with the enterprise.

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1 Four: The defendant did, or would, conduct or
2 participate either directly or indirectly in the conduct or
3 the affairs of the enterprise; and,

4 Five: The defendant knowingly agreed that he or a
5 conspirator would participate in the conduct of the affairs of
6 the enterprise through a pattern of racketeering activity
7 as described in the indictment; that is, the defendant agreed
8 that he or a conspirator would commit at least two acts of
9 racketeering activity of the types alleged in the indictment
10 and the types of which I just listed.

11 Thus, in order to convict indictment of Count One,
12 you must determine that the defendant knowingly and
13 intentionally conspired with at least one or person that he
14 and/or a conspirator would be employed by, or associated with,
15 an enterprise that affect interstate or foreign commerce as I
16 have explained each of these elements to you in Count Two.

17 To establish a pattern of racketeering activity as
18 alleged in Count One of the indictment, the Government must
19 prove three things beyond a reasonable doubt.

20 First: The defendant agreed that he and/or another
21 conspirator would commit two or more of the racketeering acts
22 of the type or types alleged in Count One of the indictment in
23 the conduct or the affairs of the enterprise. Conduct of the
24 affairs of the enterprise.

25 The government is not required to prove that the

JURY CHARGE

1 defendant personally committed two racketeering acts, or that
2 he agreed to personally commit two racketeering acts.

3 Rather, the Government must prove that the defendant
4 agreed to participate in the enterprise with the knowledge and
5 intent that at least one member of the racketeering conspiracy
6 which could but need not be the defendant himself would commit
7 at least two racketeering acts of the type or types alleged in
8 Count One of the indictment in the conduct of the affairs of
9 the enterprise.

10 These two acts need not be agreed to at the same
11 time. They may be agreed to throughout the course of the
12 conspiracy. Your verdict must be unanimous as to which type
13 or types of racketeering activity you find that the defendant
14 agreed was, or would be, committed, caused, or aided and
15 abetted.

16 I have already instructed you on the elements
17 regarding each of the alleged types of racketeering activity
18 with the exception of wire fraud which I will discuss later.

19 Second, the racketeering activity have, or would,
20 have a nexus to the enterprise, and the racketeering activity
21 was or would be related as I have defined those concepts
22 earlier.

23 Third: The racketeering activity must have extended
24 over a substantial period of time, or the racketeering
25 activity posed, or would pose, a threat of continued criminal

JURY CHARGE

1 activity.

2 As I noted earlier, the Government need not prove
3 such a threat of continuity by any mathematical formula or by
4 any particular method of proof but rather may prove it in a
5 variety of ways.

6 For example, the threat of continued unlawful
7 activity may be established when the evidence shows that the
8 racketeering activity is part of a long-term association that
9 exists for criminal purposes, or when the racketeering
10 activity is, or would be shown to be, the regular way of
11 conducting the affairs of the enterprise.

12 Moreover, in determining whether the Government has
13 proved the threat of continued unlawful activity, you are not
14 limited to consideration of the specific type or types of
15 racketeering activity alleged against the defendant.

16 Rather, in addition to considering such activity,
17 you also may consider the nature of the enterprise and other
18 unlawful activities of the enterprise and its members viewed
19 in their entirety including both charged and uncharged
20 unlawful activities.

21 In order to convict the defendant of the
22 racketeering conspiracy offense, your verdict must be
23 unanimous as to which type or types of predicate racketeering
24 activity the defendant agreed would be committed. For
25 example, at least two acts of identity theft, wire fraud,

JURY CHARGE

1 obstruction of justice, forced labor, human trafficking, sex
2 trafficking, document servitude, child exploitation, child
3 pornography, or any combination thereof.

4 The next section discusses the statute of
5 limitations for Counts One and Two.

6 If you find that the Government has proved beyond a
7 reasonable doubt all of the elements of Count One and/or Count
8 Two for the defendant, you must determine whether the statute
9 of limitations requires you to find the defendant not guilty.

10 The statute of limitations for racketeering and
11 racketeering conspiracy is five years. Thus, you must
12 determine whether the racketeering charged in Count Two or the
13 racketeering conspiracy charged in Count One continued beyond
14 July 23, 2013.

15 If you find that the racketeering, or the
16 racketeering conspiracy, was limited in time and did not have
17 a continuing purpose, you must consider whether their purposes
18 were accomplished or abandoned before July 23, 2013. If so,
19 you must find the defendant not guilty on Counts One and Two.

20 If, on the other hand, you find that the
21 racketeering and the racketeering conspiracy had a continuing
22 purpose, they are presumed to have continued beyond July 23,
23 2013.

24 In that scenario, it is the defendant's burden to
25 prove that the purposes of the racketeering and racketeering

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1 conspiracy were accomplished or abandoned before July 23,
2 2013.

3 If you find that the Government has proved that the
4 purposes of the racketeering or racketeering conspiracy were
5 accomplished or abandoned before July 23, 2013, you must find
6 the defendant not guilty on Counts One and Two.

7 The next section discusses Count Three, forced labor
8 conspiracy.

9 Count Three of the indictment charges the defendant
10 with conspiracy to commit forced labor of lower-ranking DOS
11 members between September 2015 and June 2017.

12 The indictment reads as follows:

13 In or about and between September 2015 and
14 June 2017, both dates being approximate and inclusive within
15 the Eastern District of New York and elsewhere, the defendant,
16 Keith Raniere, also known as Vanguard, Grandmaster, and
17 Master, together with others, did knowingly and intentionally
18 conspire to provide and obtain the labor and services of one
19 or more persons to wit: Lower-ranking DOS members by means
20 of, A: Force, physical restraint and threats of physical
21 restraint to them and one or more other persons. B: Serious
22 harm and threats of serious harm to them and one or more other
23 persons. And C; one or more schemes, plans, and patterns
24 indebted to cause them to believe that if they did not perform
25 such labor and services, they and one or more other persons

JURY CHARGE

1 would suffer serious harm and a combination of such means
2 contrary to Title 18, United States Code, Section 1589(a).

3 I have already instructed you on the general
4 definition of conspiracy which, as I said, is an agreement
5 among two or more people to commit a crime.

6 Here, the defendant is charged with conspiracy to
7 commit the crime of forced labor.

8 I previously instructed you on the elements of this
9 underlying crime when I discussed Racketeering Act 10(b). You
10 should apply those instructions here. I remind you that the
11 crime of conspiracy, an agreement to violate a law, as charged
12 in this count of the indictment is an independent offense. It
13 is separate and distinct from the actual violation of any
14 specific law such as the law prohibiting the crime of forced
15 labor.

16 Accordingly, you may find the defendant guilty of
17 the offense charged in Count Three even if you find that the
18 crime of forced labor was never actually committed.

19 The next section discusses Count Four, wire fraud
20 conspiracy.

21 Count Four charges the defendant with participating
22 in, and conspiracy to commit, wire fraud between
23 September 2015 and June 2017.

24 The indictment reads as follows:

25 "In or about and between September 2015 and

JURY CHARGE

1 June 2017, both dates being approximate and inclusive, within
2 the Eastern District of New York and elsewhere, the defendant,
3 Keith Raniere, also known as Vanguard, Grandmaster and Master,
4 together with others, did knowingly and intentionally conspire
5 to device a scheme and artifice to defraud one or more persons
6 to wit: Lower-ranking DOS members and to obtain money and
7 property including rights to assets, credit card
8 authorizations, and sexually explicit photographs and videos
9 from them by means of materially false and fraudulent
10 pretenses, representations, and promises, and for the purpose
11 of executing such scheme and artifice to transmit and cause to
12 be transmitted by means of wire communication in interstate
13 and foreign commerce writings, signs, signals, pictures, and
14 sounds, to wit: Electronic messages, telephone text messages,
15 and telegram messages contrary to Title 18, United States
16 Code, Section 1343."

17 I have already instructed you on the general
18 definition of conspiracy which, as I said, is an agreement
19 among two or more people to commit a crime. I remind you that
20 the crime of conspiracy to violate a federal law is a separate
21 offense from the underlying crime.

22 Conspiracy to commit wire fraud is thus separate and
23 distinct from an actual violation of wire fraud which is the
24 object of the conspiracy and what we call the "substantive
25 crime."

JURY CHARGE

1 In order to find a defendant guilty of conspiracy to
2 commit wire fraud, you must find that two or more persons
3 agreed to commit the crime of wire fraud, and that the
4 defendant knowingly and intentionally became a member of the
5 and.

6 I will now instruct you on the elements of the crime
7 of wire fraud.

8 The wire fraud statute provides in relevant part:

9 "Whoever, having devised or intending to devise any
10 scheme or artifice to defraud, or for obtaining money or
11 property by means of false or fraudulent pretenses,
12 representations, or promises transmits or causes to be
13 transmitted by means of wire, radio, or television
14 communication in interstate or foreign commerce any writings,
15 signs, signals, pictures, or sounds for the purpose of
16 executing such a scheme or artifice shall be guilty a crime."

17 The crime of wire fraud has three essential elements
18 that the Government must prove beyond a reasonable doubt.

19 First: That there was a scheme or artifice to
20 defraud, or to obtain money or property from lower-ranking DOS
21 members by materially false and fraudulent pretenses,
22 representations, or promises.

23 Second: That the defendant or a co-conspirator
24 knowingly and willfully devised or participated in the scheme
25 or artifice to defraud with knowledge of its fraudulent nature

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1 and with specific intent to defraud, and;

2 Third: That in the execution of that scheme, the
3 defendant or a co-conspirator used or caused the use of
4 interstate or foreign wire communications.

5 The first element the Government must prove beyond a
6 reasonable doubt is the existence of a scheme or artifice to
7 obtain money or property by means of false or fraudulent
8 pretenses, representations, or promises.

9 A scheme or artifice is merely a plan for the
10 accomplishment of an object. In this case, the term "defraud"
11 means to deprive another person of money, property, or any
12 other thing of value by dishonest means.

13 Therefore, a scheme to defraud here is simply any
14 plan, device, or course of action to obtain money or property
15 from someone by trick, deceit, deception, or swindle.

16 In this case, the scheme to defraud is alleged to
17 have been carried out by making false and fraudulent
18 statements, representations, and claims.

19 A statement, representation, or claim is false if it
20 is untrue when made and was then known to be untrue by the
21 person making it or causing it to be made.

22 A representation or statement is fraudulent if it
23 was falsely made with the intention to deceive. Deceitful
24 statements or half-truths or the concealment of material facts
25 may also constitute false or fraudulent statements under the

JURY CHARGE

1 statute.

2 The deception need not be premised upon spoken or
3 written words alone. The arrangement of the words, or the
4 circumstances in which they are used, may convey a false and
5 deceptive appearance. If there is a deception, the manner in
6 which it is accomplished is immaterial.

7 The false or fraudulent pretense, representation,
8 promise, or statement must relate to a material fact or
9 matter.

10 A material fact is one that reasonably would be
11 expected to be of concern to a reasonable and prudent person
12 in relying upon the pretense, representation, promise, or
13 statement in making a decision. This means that if you find a
14 particular statement of fact or representation to have been
15 false, you must also determine whether that statement or
16 representation was one that a reasonable person would have
17 considered important in making his or her decision.

18 The same principle applies to fraudulent half-truths
19 or omissions of material facts that were necessary to render
20 the statements that were made not materially misleading.

21 The Government does not need to prove that anyone
22 actually relied on the false statement or representation.
23 Rather, it is sufficient if the misrepresentation was one that
24 is capable of influencing a reasonable person's decision and
25 it was intended to do so.

JURY CHARGE

1 In addition to proving that a pretense,
2 representation, promise, or statement was false or fraudulent
3 and related to material fact, in order to establish a scheme
4 to defraud, the Government must prove that the alleged scheme
5 contemplated depriving another of money or property.

6 The Government is not required, however, to prove
7 that the scheme or artifice to defraud actually succeeded.
8 That is, the Government is not required to prove that the
9 defendant or a co-conspirator realized any gain from the
10 scheme, or that the intended victim suffered any loss or harm.

11 The question for you to decide is whether the
12 Government has proved that the defendant knowingly devised or
13 participated in a scheme to defraud. Whether or not the
14 scheme actually succeeded is not a question you may consider
15 in determining whether such a scheme existed.

16 A scheme or artifice to defraud need not be shown by
17 direct evidence but may be established by all the
18 circumstances and facts in the case.

19 The second element of the wire fraud count that the
20 Government must be establish beyond a reasonable doubt is that
21 the defendant devised or participated in the fraudulent scheme
22 knowingly, willfully, and with the specific intent to defraud.
23 To devise a scheme to defraud is to concoct or plan it. To
24 participate in a scheme to defraud means to associate one's
25 self with it with a view and intent to toward making it

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1 succeed. I have previously defined the terms "knowingly" and
2 "willfully" and you should follow those instructions here as
3 well as.

4 Intent to defraud means engaging or participating in
5 the fraudulent scheme with some realization of its fraudulent
6 or deceptive character and with an intention to be involved in
7 the scheme to defraud and to help it succeed with the purpose
8 of obtaining money or property from the victim.

9 I further instruct you that a false representing or
10 omission of a material fact does not amount to a fraud unless
11 done with fraudulent intent. However misleading or deceptive
12 a plan may be, it is not fraudulent if it was devised or
13 carried out in good faith. An honest belief in the truth of
14 the representations made by a defendant is a complete defense
15 to this count however inaccurate the statements may turn out
16 to be.

17 The question of whether a person acted knowingly,
18 willfully, and with intent to defraud is a question of fact
19 for you to determine like any other fact question. This
20 question involves one's state of mind.

21 As I have previously mentioned, direct proof of
22 knowledge and fraudulent intent is often not available.
23 Indeed, it would be a rare case where it could be shown that a
24 person wrote or stated that as of a given time in the past, he
25 committed an act with fraudulent intent. Such direct proof,

JURY CHARGE

1 however, is not required.

2 Now, the third and final element that the Government
3 must establish as to the wire fraud count is that interstate
4 wire facilities were used in furtherance of a scheme to
5 defraud.

6 The interstate or foreign requirement means that the
7 wire communication must pass between two or more states as,
8 for example, an telephone call, a wire transfer of funds
9 between banks in different states, or an e-mail or electronic
10 message that was transmitted over interstate wires. It is not
11 necessary for the defendant to be directly or personally
12 involved in any wire communication as long as the
13 communication is reasonably foreseeable in the execution of
14 the alleged scheme to defraud in which the defendant is
15 accused of participating.

16 In this regard, it would be sufficient to establish
17 this element of the crime if the Government has proved that
18 the defendant caused the wires to be used by others. And if
19 this does not mean that the defendant himself must have
20 specifically authorized or directed others to execute a wire
21 communication.

22 When a person acts with knowledge that the use of
23 wire facilities will follow in the ordinary course of business
24 or where the use of wire facilities can reasonably be foreseen
25 even though not actually intended, then he causes the wires to

JURY CHARGE

1 be used.

2 Furthermore, the requirement that an interstate or
3 foreign wire facility was used is satisfied even if a wire
4 facility was used by a person with no knowledge of the
5 fraudulent scheme including a victim of the alleged fraud so
6 long as the wire was in furtherance of the alleged scheme.

7 The use of a wire facility need not itself be
8 fraudulent. Stated another way, the material sent by wire
9 need not contain any fraudulent representation or any request
10 for money. It is sufficient if a wire facility was used to
11 further or assist in carrying out the scheme to defraud.

12 Only the use of the wire facility must be reasonably
13 foreseeable, not its interstate or foreign component.

14 Thus, if you find that the use of a wire facility
15 was reasonably foreseeable, and an interstate or foreign wire
16 facility was actually used, then this element is satisfied.
17 Even if it was not foreseeable that the wire communication
18 would cross state or national boundaries.

19 I remind you that the crime of conspiracy, an
20 agreement to violate a law, as charged in this count of the
21 indictment is an independent offense. It is separate and
22 distinct from the actual violation of any specific law such as
23 the law prohibiting the crime of wire fraud.

24 Accordingly, you may find the defendant guilty of
25 the offense charged in Count Four even if you find that the

JURY CHARGE

1 crime of wire fraud with never actually committed.

2 THE COURT: Thank you.

3 I'm now going to discuss Count Five, sex trafficking
4 conspiracy.

5 Count Five of the indictment charges the defendant
6 with conspiracy to engage in sex trafficking of lower-ranking
7 DOS members.

8 The indictment reads as follows:

9 "In or about and between February 2016 and
10 June 2017, both dates being approximate and inclusive, within
11 the Eastern District of New York and elsewhere, the defendant,
12 Keith Raniere, also known as Vanguard, Grandmaster and Master
13 together with others, did knowingly and intentionally conspire
14 to recruit, entice, harbor, transport, provide, obtain,
15 maintain, patronize, and solicit one or more persons to wit:
16 One or more lower-ranking DOS members in and affecting
17 interstate commerce and to benefit financially, and by
18 receiving anything of value from participation in a venture
19 that engages in such acts. Knowing and in reckless disregard
20 of the fact that means of force, threats of force, fraud and
21 coercion and a combination of such means would be used to
22 cause such persons to engage in one or more commercial sex
23 acts which offense was affected by force, fraud, coercion, and
24 a combination of such means contrary to Title 18, United
25 States Code, Section 1591(a)(1) and 1591(a)(2).

JURY CHARGE

1 I have already instructed you on the general
2 definition of conspiracy which, as I said, is an agreement
3 among two or more people to commit a crime.

4 Here, the defendant is charged with conspiracy to
5 commit the crime of sex trafficking which I will refer to as
6 "the underlying crime."

7 I previously instructed you on the elements of the
8 crime of sex trafficking under Racketeering Act 10(a). You
9 should apply those instructions here.

10 If you find that the Government proved beyond a
11 reasonable doubt that the defendant knowingly and
12 intentionally agreed with others to commit sex trafficking of
13 one or more lower-ranking DOS members, then you should find
14 the defendant guilty of Count Five.

15 As I already instructed you, a conspiracy is a crime
16 even if it does not achieve its purpose. The Government does
17 not have to prove that the defendant or his co-conspirators
18 actually committed the crime of sex trafficking.

19 What the Government must prove is that the defendant
20 voluntarily entered into the conspiracy whose purpose was to
21 commit sex trafficking.

22 I will now go on to Count Six: Sex Trafficking.

23 Count Six charges the defendant with committing sex
24 trafficking as to Nicole between February 2016 and June 2017.

25 The indictment reads as follows:

JURY CHARGE

1 "In or about and between February 2016 and
2 June 2017, both dates beings approximate and inclusive, within
3 the Eastern District of New York and elsewhere, the defendant,
4 together with others, did knowingly and intentionally recruit
5 entice, harbor, transport, provide, obtain, maintain,
6 patronize and solicit a person to wit: Nicole, in and
7 affecting interstate and foreign commerce and did benefit
8 financially and by receiving anything of value from
9 participation in a venture that engaged in such acts knowing
10 and in reckless disregard of the fact that means of force,
11 threats of force, fraud and coercion, and a combination of
12 such means would be used to cause Nicole to engage in one or
13 more commercial sex acts which offense was affected by force
14 fraud, coercion, and a combination of such means."

15 I instructed you regarding the elements of this
16 crime under Racketeering Act 10(a). You should refer to those
17 instructions when considering this count.

18 Count Seven: Attempted Sex Trafficking of Jay.

19 Count Seven charges the defendant with attempted sex
20 trafficking of Jay between February 2016 and June 2017.

21 The indictment reads as follows:

22 "In or about and between February 2016 and
23 June 2017, both dates being approximate and inclusive, within
24 the Eastern District of New York and elsewhere, the defendant,
25 Keith Raniere, also known as Vanguard, Grandmaster and Master,

JURY CHARGE

1 together with others, did knowingly and intentionally attempt
2 to recruit, entice, harbor, transport, provide, obtain,
3 maintain, patronize, and solicit one or more persons to wit:
4 Jay, in and affecting interstate and foreign commerce and to
5 benefit financially and by receiving anything of value from
6 participation in a venture that engaged in such acts knowing,
7 and in reckless disregard, of the fact that means of force,
8 threats of force, fraud, and coercion, and a combination of
9 such means would be used to cause such person to engage in one
10 or more commercial sex acts which offense was affected by
11 force, fraud, coercion, and a combination of such means in
12 violation of Title 18, United States Code, Section 1591(a) (1)
13 and 1591(a) (2)."

14 (Continued on the next page.)
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JURY CHARGE

1 THE COURT: To prove Count Seven the Government does
2 not have to prove that the defendant actually committed sex
3 trafficking with respect to Jay. I've already instructed you
4 regarding the elements underlying the crime of sex trafficking
5 under Racketeering Act 10A, and you should apply those
6 instructions here. Just remember that with regard to Count
7 Seven you're being asked to determine not whether the
8 underlying crime was committed, but only whether the defendant
9 attempted to commit that crime.

10 To prove the defendant attempted to commit sex
11 trafficking as to Jay, the Government must establish the
12 following two elements beyond a reasonable doubt.

13 First, the defendant intend to commit the crime of
14 sex trafficking of Jay.

15 And Second, that the defendant did some act that was
16 a substantial step in an effort to bring about or establish
17 the crime.

18 The first element the Government must prove beyond a
19 reasonable doubt is that the defendant intended to commit the
20 crime of sex trafficking. You should apply my previous
21 instructions as to intent to this element.

22 The second element the Government must prove is that
23 the defendant took a substantial step toward this goal of
24 committing the crime of sex trafficking of Jay. Mere
25 intention to commit a specific crime does not amount to an

JURY CHARGE

1 attempt. To convict the defendant of an attempt you must find
2 beyond a reasonable doubt that the defendant intended to
3 commit the crime charged, and that he took some action that
4 was a substantial step toward the commission of that crime.

5 In determining whether the defendant's actions
6 amounted to a substantial step toward the commission of the
7 crime, it is necessary to distinguish between mere preparation
8 on the one hand, and the actual doing of the criminal deed on
9 the other. Mere preparation, which may consist of planning
10 the offense or of devising, obtaining or arranging a means for
11 its commission is not an attempt, although some preparations
12 may amount to an attempt. The acts of a person who intends to
13 commit a crime will constitute an attempt when the acts
14 themselves clearly indicate an intent to commit the crime, and
15 the acts are a substantial step in the course of conduct
16 planned to culminate in the commission of the crime.

17 All right. I will now give you some general rules
18 regarding your deliberations. Keep in mind that nothing I
19 have said in these instructions is intended to suggest to you
20 in any way what I think your verdict should be, that is
21 entirely for you to decide.

22 I remind you that it is your responsibility to judge
23 the facts in this case from the evidence presented during the
24 trial, and to apply the law as I have given it to you to the
25 facts as you find them from the evidence.

JURY CHARGE

1 Each of you will be provided with a copy of these
2 instructions and a verdict sheet for your use during
3 deliberations. You'll receive most of the evidence for your
4 review in the jury room. If you require any of the other
5 items, evidence or testimony, please advise me.

6 And I have the verdict sheet here. There will be a
7 place on the last page of one copy of it for the foreperson to
8 sign it, when you've completed your work, and to date it. But
9 everybody else will get a copy of the verdict sheet as well so
10 you can follow along.

11 When you retire, your first duty is to elect a
12 foreperson. Traditionally, juror number one acts as the
13 foreperson. Of course, the foreperson's vote is entitled to
14 no greater weight than of any other juror.

15 It is your duty to discuss the case for the purpose
16 of reaching a verdict. Each of you must decide the case for
17 yourself. You should make your decision only after
18 considering all the evidence, listening to the views of your
19 fellow jurors, and discussing it fully. It is important that
20 you reach a verdict, if you can do so, conscientiously. You
21 should not hesitate to reconsider your opinions from time to
22 time, and to change them if you are convinced that they are
23 wrong. However, do not surrender an honest conviction as to
24 the weight and effect of the evidence simply to arrive at a
25 verdict.

JURY CHARGE

1 Remember also that your verdict must be based solely
2 on the evidence or lack of evidence in this case, and the law
3 as the Court has given it to you, not on anything else.
4 Opening statements, closing arguments, other statements or
5 arguments of counsel are not evidence. If your recollection
6 of the facts differs from the way counsel has stated the
7 facts, then your recollection controls.

8 Finally, bear in mind that the Government has the
9 burden of proof and that you must be convinced of the
10 defendant's guilt beyond a reasonable doubt to return a guilty
11 verdict. If you find that this burden has not been met, you
12 must return a verdict of not guilty. By contrast, if you find
13 the Government's burden has been met, then you must return a
14 verdict of guilty.

15 You cannot allow consideration of the punishment
16 that may be imposed upon the defendant if convicted to
17 influence your verdict in any way or to enter into your
18 deliberations.

19 The duty of imposing sentence rests exclusively with
20 me. Your duty is to weigh the evidence in the case and to
21 determine the guilt or non-guilt solely upon such evidence or
22 lack of evidence and upon the law without being influenced by
23 any assumptions, conjectures, sympathy or inference not
24 warranted by the facts.

25 It is very important that you not communicate with

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1 anyone outside the jury room about your deliberations, or
2 about anything else related to this case. There is only one
3 exception to this rule, if it becomes necessary during your
4 deliberations to communicate with me, you may send a note
5 through the Marshal, signed by your foreperson or by one or
6 more of a members of the jury. No member of the jury should
7 ever attempt to communicate with me, except by a signed
8 writing. And I will never communicate with any member of the
9 jury on any subject touching the merits of the case, other
10 than in writing or orally right here in court. If you send
11 any notes to the Court, do not disclose anything about your
12 deliberations. Specifically, do not disclose to anyone, not
13 even me, how the jury stands numerically or otherwise on the
14 question of a guilt or non-guilt of the defendant, until after
15 you have reached a unanimous verdict or have been discharged.

16 You have the right to see exhibits or hear testimony
17 during your deliberations. Many of the exhibits will be
18 provided to you in the jury room. If you would like to review
19 a witness's testimony during your deliberations, you may send
20 a note, a signed note, to me requesting the specific portion
21 of the testimony and we'll provide it to you. Please be
22 patient, as it may take a while to locate the relevant portion
23 of the transcript. Please make your requests as specific as
24 possible so that we may more promptly assist you.

25 If you wish to see an item of evidence, such as a

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1 video or voice recording or a photograph, which has not been
2 provided to you, please advise us in writing about what you
3 wish to receive and you will be brought out here so that the
4 whatever the item of evidence that could not be brought to you
5 will be shown to you, if you so request it. Please be
6 specific as to exactly what it is, or generally, what it is
7 that you're looking to review.

8 When you have reached a decision, have the
9 foreperson sign the verdict form and put the date on it and
10 notify the Marshal by note that you have reached a verdict.
11 Any verdict you reach must be unanimous.

12 Your oath sums up your duty, and that is: Without
13 fear or favor to any person you'll well and truly try the
14 issues in this case according to the evidence given to you in
15 court and the laws of the United States.

16 Now, you'll recall that at the end of every day I
17 gave you instructions of what you're not to do, those
18 instructions apply. The only time that the jurors can discuss
19 the case in the jury room is when all 12 of you are present.
20 So if someone goes to the lavatory or to make a phone call or
21 whatever it is, you're to stop deliberating. When the person
22 comes back, you can continue to deliberate. The 12 jurors
23 will be in the jury room; the four alternates will be in a
24 separate jury room. And you'll be provided with your lunch
25 meal in the jury room so you don't have to travel and so you

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1 can give all your attention to the work at hand of reaching a
2 verdict.

3 Also, between the hours of one and two the lawyers
4 and the rest of us get to go to lunch. If you send us a note
5 at ten to one, we'll start working on it as soon as we get
6 back from lunch, so you may have to wait a little longer. I
7 just point that out to you as well.

8 In addition, if it becomes necessary for you to
9 continue to deliberate past Friday -- we all understand the
10 problem that we're going to have on Monday if we lose a juror
11 or two -- so I may ask you to deliberate on Saturday, if it's
12 possible for you to, if you think it's possible for you to
13 reach a verdict by Saturday. But we're not there yet. I just
14 wanted to raise the issue.

15 I know you talked to Joe about scheduling issues,
16 and he talks to me, and I talk to all of the lawyers. So
17 we'll e fully informed of anything you wish to bring to us.

18 But, at this point before we go any further and you
19 go home for the night, let me just ask the parties for a very
20 brief sidebar.

21 (Continued on the next page.)
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SIDEBAR CONFERENCE

1 (Sidebar conference.)

2 THE COURT: Other than the issues that I ruled on
3 during the course of preparing the jury charge? Are there any
4 other issues?

5 MR. AGNIFILO: Is your Honor intending to put common
6 before purpose on page 45?

7 THE COURT: Was it placed in there?

8 MR. AGNIFILO: I thought.

9 THE COURT: I could put it in there. I can put it
10 in the instruction.

11 MS. HAJJAR: I know you requested it, but I didn't
12 think --

13 MR. AGNIFILO: You didn't agree? I thought you did.

14 MS. HAJJAR: We hadn't agreed to the remainder. I
15 guess we don't have a particular objection to that.

16 THE COURT: Can I just put it in?

17 MR. AGNIFILO: That's fine.

18 THE COURT: You want me to read it?

19 MR. AGNIFILO: You don't have to read it.

20 THE COURT: On page 45 I'll put it in. I don't feel
21 one way or the other about it.

22 MR. AGNIFILO: I don't think you need to read it,
23 just write it in, it's fine.

24 THE COURT: I think we discussed it; I can't
25 remember if we resolved it.

SIDEBAR CONFERENCE

1 MS. GERAGOS: We discussed it in a letter on the
2 proposed charge, but Ms. Hajjar did agree to --

3 THE COURT: I'll just add it.

4 MR. AGNIFILO: Real minor, I think it's Racketeering
5 Act on 77.

6 THE COURT: Yes, Racketeering Act on 77. We've got
7 some typos, we're going to fix them.

8 MR. AGNIFILO: Racketeering Act on 78.

9 THE COURT: We got that.

10 MR. AGNIFILO: What do you feel about Count Six, sex
11 trafficking of Nicole.

12 THE COURT: We'll add Nicole.

13 Anything else? Otherwise we're good? We can send
14 them home?

15 MR. AGNIFILO: Yes.

16 MS. HAJJAR: Yes.

17 (End of sidebar conference.)

18 (Continued on the next page.)
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PROCEEDINGS

1 (In open court.)

2 (Marshal sworn.)

3 THE COURT: Ladies and gentlemen of the jury, we're
4 done for the day. Tomorrow morning when you arrive, when all
5 12 of are you in the jury room, you may start your
6 deliberations. We will provide you with the materials we
7 promised you. We're not going to call you out to start, but
8 all 12 of you need to be present to start.

9 All rise for the jury.

10 (Jury exits the courtroom.)

11 THE COURT: You may be seated. So tell me about the
12 marshaling of the evidence.

13 MS. PENZA: Thanks to our amazing paralegals, I
14 think we're actually very close. I think we have almost all
15 of our exhibits, so we're working to pull out the more
16 sensitive material. And we'll have a discussion about which
17 things, there are a couple of items that we would request go
18 back redacted. But other than that, I think we're pretty
19 close.

20 THE COURT: Why don't we then meet at 9:00 o'clock
21 tomorrow morning.

22 MR. AGNIFILO: We have ours, Judge. I haven't
23 checked it, but I'm led to believe we have ours, subject to a
24 final check.

25 THE COURT: Discuss this among yourselves. This way

PROCEEDINGS

1 at nine tomorrow morning when the jurors get here, they get
2 here between nine and 9:15 depending on traffic, we can send
3 everything into them and they can take it from there.

4 MR. AGNIFILO: Okay.

5 THE COURT: All right. Is there anything else for
6 this evening?

7 MS. PENZA: No, your Honor.

8 THE COURT: Anything else?

9 MR. AGNIFILO: Nothing from us, Judge.

10 THE COURT: Have a good night. Thank you.

11 MR. AGNIFILO: What time do you want the defendant,
12 nine or 9:30?

13 THE COURT: Do you need the defendant to look at
14 these items? I think he should be here at nine. I think
15 everybody should be here at nine. I don't want to leave him
16 out of any of the discussion.

17 Thank you very much, Deputies.

18 (Proceedings adjourned at 5:05 p.m. to resume on
19 June 19, 2019 at 9:00 a.m.)
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